

Thursday, 17 February 2022

1

2 (10.00 am)

3 LADY SMITH: Good morning and welcome to the last day of our  
4 boarding school case study hearings. It's been a long  
5 haul, but thank you to all of you for everything you  
6 have contributed so far and for attending this morning  
7 for this final session.

8 I'm going to hand straight over to Mr Brown, and  
9 he'll take it from there -- I gather he doesn't intend  
10 to address me for very long -- and then we'll proceed to  
11 hear from those who have asked to make a submission this  
12 morning. I'm looking forward to hearing them.

13 Mr Brown.

14 Submissions by Mr Brown

15 MR BROWN: My Lady, good morning. I don't intend to detain  
16 anyone very long this morning. I've talked a great deal  
17 over the last nine months or so, and, as Your Ladyship  
18 says, this is the last final day of the boarding school  
19 submissions, a case study that was originally to have  
20 been held in 2020, but has been impacted and hampered  
21 dramatically by Covid and also, from the Inquiry's point  
22 of view, by a move of office, which was a considerable  
23 labour.

24 My thanks are due to the Inquiry staff and to all  
25 those who have played a part in the hearings since March

1 of last year for their efforts to keep momentum going  
2 and their willingness, despite adversity.

3 Particular thanks, I think, have to be made to the  
4 schools that have been under enquiry. They in very  
5 large part continued to give excellent support and input  
6 in times when they were having to face very real  
7 problems in caring for the children of today, given the  
8 very significant restrictions placed upon them, and  
9 I think it's proper to record my gratitude to them.

10 Notwithstanding all the difficulties that have been  
11 faced, this has been an interesting and revealing case  
12 study, emphasising that abuse can happen to children  
13 anywhere, from any background, even those, to lift from  
14 Mr Scott's submission, who could be described lazily as  
15 "privileged".

16 We have heard thoughtful and useful evidence about  
17 how to best care for children in residential care from  
18 220 witnesses, or thereby, in one form or another, as  
19 well as the most harrowing accounts of abuse.

20 A number of themes have become clear since we  
21 started in March 2021 and obviously will be touched upon  
22 in the submissions that Your Ladyship is about to hear.

23 It's good to hear from Loretto again, given that we  
24 last heard from them in April 2021, to hear how they  
25 have continued to reflect on past problems and how more

1 widely the care of children in boarding residential care  
2 might be improved. They're a good example of the way  
3 the schools of today are thinking about the schools of  
4 yesterday.

5 As is clear from them, and echoed by the other  
6 schools, there remain issues of who and when to report  
7 concerns to. There certainly seems to be universal  
8 acceptance amongst the providers that Scotland would  
9 benefit from the LADO-type role that already exists in  
10 England. That enthusiasm does not appear to be shared  
11 thus far by government and existing oversight bodies,  
12 but it is something that we can consider.

13 There appear to be ongoing tensions in the  
14 inspection regimes of boarding schools, and limitations  
15 in what inspectors, both from HMIE and Care  
16 Inspectorate, can do or think they are able to do. From  
17 the evidence we have heard of boarding schools' current  
18 practice, remembering in particular the various bespoke  
19 monitoring systems that are now universally used, the  
20 reality seems to be that all staff, whether GTCS or SSSC  
21 registered are now involved in the care of children and  
22 the classic distinctions of teaching and boarding staff  
23 are now outdated.

24 There is also the issue of language, which has  
25 reappeared time after time, with an apparent lack of

1 clarity in what is said in guidance and reports. As was  
2 observed in yesterday's Times about revisions to the  
3 OECD report, "Educational jargon renders easily  
4 understandable statements into gobbledygook". Certainly  
5 the use of language in guidance appears at times  
6 positively unhelpful, looking for example to the Care  
7 Inspectorate reports, when one thinks of Merchiston  
8 after the events of 2013 and the chaos that followed  
9 JRB's suicide, none of that would have been apparent,  
10 let alone the suicide itself, from the reports that  
11 followed.

12 I do note what is said by the Care Inspectorate in  
13 their submissions, but I would observe that looking to  
14 the most recent Care Inspectorate report on Merchiston,  
15 it is still only with the level of knowledge that the  
16 Inquiry has, having been provided with information by  
17 the school, that it is obvious what is being spoken  
18 about in the reports, and these are reports that are for  
19 public consumption.

20 The two issues of language and reporting link very  
21 clearly with the police. There appears no doubt that  
22 the loss of local knowledge and contact with schools is  
23 a retrograde step. All voices sing together on that  
24 one.

25 The final paragraphs of the police submissions --



1 a repeat, I think, from early submissions -- might be  
2 more simply put: victims of abuse and those reporting it  
3 should be able to speak to someone from the outset who  
4 understands the issue.

5 Looking briefly to other matters, it's good to hear  
6 that SSSC have revised their guidance, given tensions  
7 identified in the introductory hearings in March last  
8 year. It would be helpful -- I'm sure this will  
9 happen -- if all organisations could continue to update  
10 the Inquiry as changes take place. I'm thinking in  
11 particular of the number of reviews alluded to in the  
12 Scottish Government submission.

13 It's also helpful to know from the Crown that  
14 discussions are ongoing with GTCS about  
15 information-sharing.

16 For that is the other clear theme of this chapter of  
17 the Inquiry. Clear and open communication, whether it  
18 is about recruitment or the behaviour of an individual  
19 pupil or teacher is key. There is no place for the  
20 traditional approach of keeping things "in school".  
21 That is no way to protect children from abuse.

22 LADY SMITH: Thank you, Mr Brown.

23 Could I begin, please, with inviting Ms Grahame, who  
24 appears for Loretto School, to address me.

25



1 the information that has been provided by Loretto over  
2 the time.

3 From the moment Loretto School engaged with the work  
4 of this Inquiry to the moment that Dr Graham Hawley,  
5 headmaster of the school, and Mr Peter McCutcheon, chair  
6 of the board of governors of the school gave their  
7 evidence, Loretto has demonstrated and certainly sought  
8 to demonstrate a well-embedded commitment to the  
9 protection of children and the provision of  
10 an environment that allows them to thrive.

11 At the last evidential hearing, Your Ladyship raised  
12 in discussion with my client three key features which  
13 could be recommended to young people as a way to live in  
14 society.

15 During their evidence, Dr Hawley and Mr McCutcheon  
16 spoke of wanting all staff to demonstrate in their  
17 actions that they believe in those three features.  
18 They're features which will equip children for the  
19 future and provide them with positive role models.

20 For this reason, the submissions in May of last year  
21 were shaped around those three features and my structure  
22 today, my Lady, mirrors the structure from May last  
23 year.

24 Number one, authenticity.

25 Number two, adopting and practising a growth

1 mindset.

2 Number three, being utterly uncompromising about  
3 having a strong moral compass.

4 First of all, authenticity. I'll read this short,  
5 my Lady. The Inquiry has heard many negative and  
6 positive aspects of culture in schools. Culture, which  
7 may be described as the way in which an organisation and  
8 those within it think, behave and act, does not exist of  
9 itself as a set of norms shaped by tradition and  
10 history, but rather is defined by what is happening at  
11 the moment.

12 Culture is not traditionalism. Traditionalism is  
13 the act of doing things repetitively, just because that  
14 is the way they've always been done, and this is rightly  
15 rejected by SCIS in their note of wider reflections  
16 which I've footnoted in the submissions.

17 Culture is created and directly related to the way  
18 in which schools are run, and an expression of this is  
19 found in the quotation:

20 "The culture of any organisation is shaped by the  
21 worst behaviour the leader is willing to tolerate."

22 I've footnoted the reference to that, my Lady.

23 This approach could be usefully applied to  
24 an analysis of what has happened in the past, but should  
25 also consider the current approach taken by Loretto, as

1 leadership and governance lie at the heart of culture.

2 To have an individual leading a school without  
3 appropriate governance is not congruent with shaping  
4 good culture. No matter how good that individual, it is  
5 right that there be not just checks and balances but  
6 rather real, determined and sustained engagement by  
7 governors to ensure that the behaviour which might be  
8 considered to be unacceptable is not tolerated.

9 Translating this to practical terms and the analysis  
10 of culture in Loretto, what is at the heart of their  
11 culture is openness, respect, constructive questioning,  
12 and the active desire to examine what lessons might be  
13 learned where things have not gone as had been hoped.

14 Mr McCutcheon referred to this as "creating  
15 a culture of doing the right thing on a bad day".

16 LADY SMITH: And that is not easy.

17 MS GRAHAME: It's not, my Lady.

18 LADY SMITH: But always needs to be striven for.

19 MS GRAHAME: Absolutely. And that is what Loretto are  
20 striving for.

21 An enduring outcome of this Inquiry is the need to  
22 continually ensure that the organisation is not  
23 controlled by historic notions of culture, but rather to  
24 ensure that culture is shaped by excellent leadership  
25 and by the role of governance, as was clearly outlined

1 in the very full submissions which were made last May.

2 Doing the right thing on a bad day requires the  
3 organisation to optimise a culture within the school  
4 that increases the chance of that right thing happening.  
5 This then creates and supports a virtuous cycle,  
6 a culture of learning and developing good practice, and  
7 it encourages the school to always be reflecting but  
8 equally moving forward and improving.

9 This takes time. Children are in the process of  
10 learning how to live in society and how to be good  
11 members of society. They make mistakes. Things go  
12 wrong. This approach takes time and effort, and as new  
13 children arrive it is never ending. That is part of the  
14 joy of teaching young people and it presents challenges  
15 and reaps rewards. It's only really by looking in the  
16 rear view mirror that one can consider how successful  
17 a school has been at that task.

18 But mindset is key. It is not a failure of culture  
19 to be faced with or to identify issues or difficulties.  
20 A failure is brushing issues under the carpet, hiding  
21 them or not tackling them head on. That is a failure.

22 Failure should not be judged by identifying solely  
23 where things have gone wrong but by ensuring that when  
24 things do go wrong, the response to that is sound. That  
25 is done through strong leadership and good governance.

1           As Your Ladyship knows, Loretto accepts that  
2           failures took place in the past. Loretto wrestled with  
3           these issues and a cultural shift did take place.  
4           Loretto has openly acknowledged those failures and the  
5           impact that that has had on survivors.

6           Like many schools today, Loretto strives to maintain  
7           a safe environment in which every child can feel secure  
8           and grow. Loretto recognises that more can be done and  
9           Loretto wants to be part of the solution.

10          The second chapter is adopting and practising  
11          a growth mindset.

12          As we noted in May last year, things have previously  
13          gone wrong in the school, but from the 1990s Loretto has  
14          sought to adopt progressive and modern safeguarding  
15          policies. There has been a clear focus on change in the  
16          area of child protection and detailed examples were  
17          given in our previous submissions and documents were  
18          also provided where we sought to demonstrate how these  
19          changes are working in practice in the school now.

20   LADY SMITH: Yes, thank you for those.

21   MS GRAHAME: We explained the lessons learned approach  
22          adopted by the school now, and I'd like to remind  
23          Your Ladyship of the evidence of Dr Hawley, who also  
24          made reference to the aviation model of transparency and  
25          the book "Black Box Thinking" by Matthew Syed which

1 emphasises the need to learn lessons and to change  
2 following failure.

3 Without repeating those examples at length, there  
4 are some areas that have been the subject of further  
5 consideration within Loretto, particularly in relation  
6 to regulatory agencies. Evidence was heard during the  
7 Inquiry from a variety of agencies and it was clear that  
8 there may be a need to notify incidents to more than one  
9 organisation. It was recognised that this posed some  
10 practical difficulties.

11 The considered view of Loretto is that there is much  
12 to commend a single point of contact similar to the LADO  
13 system in England, the Local Authority Designated  
14 Officer. This recommendation is offered without  
15 criticism of individual agencies, but rather as  
16 a forward-looking step that would make the process of  
17 reporting concerns more streamlined and efficient to  
18 administer. Flowing from this, there is a need to  
19 ensure that the architecture is such that the various  
20 regulatory organisations improve communication channels  
21 and share information as effectively as possible. The  
22 removal of any barriers to open communication would  
23 improve reporting and enhance child protection between  
24 organisations and across borders.

25 Loretto would welcome Your Ladyship's consideration



1 of this and also of how the role of the Registrar of  
2 Independent Schools best sits within that framework.

3 LADY SMITH: I've also been struck, Ms Grahame, not by the  
4 fact that the LADO system provides one person as the  
5 point of contact for discussion, guidance, notification,  
6 if there is a problem that needs notifying, but as  
7 I understand the way it works, that person then follows  
8 up, that person liaises between the agencies that  
9 require to take notice of whatever it is that has to be  
10 notified to them, and not just liaise but keep finding  
11 out what's being done about the problem. It follows  
12 right through, I think, if it's working properly in any  
13 particular area. It's not just, "Fine, we've got the  
14 notice and we'll hand it on to the right agencies".  
15 They retain ownership of the issue.

16 MS GRAHAME: Absolutely, my Lady, and that provides, I would  
17 suggest, a robust structure and the continuity, which  
18 could only be to the benefit of children. No one there  
19 is pushing it off their desk or ticking a box. They are  
20 taking responsibility to follow up and follow on with  
21 that.

22 The school, my Lady, has also prepared an update  
23 following phase 1, along with a detailed table setting  
24 out actions which have been taken. That's available for  
25 Your Ladyship's consideration in detail and it is up to

1 date.

2 LADY SMITH: Thank you.

3 MS GRAHAME: The third chapter is being utterly  
4 uncompromising about having a strong moral compass.

5 Finally, Loretto wishes to say something of the  
6 enduring legacy of the Inquiry. As has been recognised,  
7 the work of the Inquiry has been much valued, and in the  
8 fullness of time findings in fact and recommendations  
9 will be greatly welcomed.

10 What this Inquiry has done is to give a voice to  
11 survivors and to allow the school to hear from those who  
12 have had significantly adverse experiences at the  
13 school. Whilst this has been important in the confines  
14 of the Inquiry, it has resulted in some of the  
15 individuals involved coming directly to the school --  
16 that was after the last phase of evidence -- to speak of  
17 their experiences. Of course, these individuals have  
18 been signposted to the Inquiry.

19 Loretto has sought to personally engage with  
20 survivors, to listen to them and to truly understand  
21 their experiences at the school. There has been  
22 engagement both with those who have given evidence and  
23 with others who have subsequently come forward. That  
24 has been meaningful and instructive to Loretto and it is  
25 also believed to have been so to those who have made

1 contact.

2 Long after the formal work of this Inquiry is  
3 complete, part of the enduring legacy will be the  
4 positive desire of Loretto to listen and engage in  
5 a meaningful way with those who seek to do so. A goal  
6 going forward is to ensure that there is some permanent  
7 legacy which records the genuine appreciation of those  
8 who have come forward to speak of their experiences and  
9 the actions are worthy of the very highest accolades in  
10 the eyes of Loretto.

11 In conclusion, we would wish again to thank  
12 Your Ladyship and her Inquiry team, particularly Senior  
13 Counsel to the Inquiry, for the assistance provided to  
14 the school to allow us to fully engage with the work of  
15 the Inquiry throughout.

16 Most critically, I am again instructed not only to  
17 repeat a deeply sincere and unreserved apology to those  
18 who have suffered any form of abuse whilst in the care  
19 of the school, but also to make it clear that Loretto  
20 will always be willing to engage, listen and learn.

21 Whilst there is great sadness about what has been  
22 learned from those experiences, the current leadership  
23 at Loretto have learned a great deal from what has been  
24 heard and are determined that the courage of those  
25 survivors should be recognised and have an enduring

1 legacy.

2 LADY SMITH: Thank you very much, Ms Grahame.

3 MS GRAHAME: Thank you, my Lady.

4 LADY SMITH: Next I would like to invite Mr Scott, who is  
5 here representing INCAS, to address me.

6 Submissions by Mr Scott

7 MR SCOTT: Thank you, my Lady.

8 Even before I heard from Ms Grahame this morning,  
9 I had spotted an omission in the submissions which were  
10 sent in to the Inquiry. Your Ladyship's Inquiry is now  
11 within the justice system generally seen as an excellent  
12 model of how difficult, challenging evidence can be  
13 elicited and presented, how impressive and  
14 trauma-informed preparation and presentation can make  
15 the still traumatic experience of sharing what has  
16 happened to the individuals from whom the Inquiry has  
17 heard as children to one that they have been able to  
18 take part in and to feel that they have been heard and  
19 acknowledged.

20 The particular omission beyond that -- I should say  
21 that this Inquiry is being used as a model in other  
22 Inquiries and Your Ladyship would be aware of the  
23 opportunities that have been taken for shared  
24 learning -- was in recognising the continuing impressive  
25 work of counsel to the Inquiry.

1           When very high standards have been set, as they have  
2           been, it's sometimes, although not forgivable, easy to  
3           take it for granted and instead it should be  
4           acknowledged and I do that in relation to Mr Brown and  
5           Ms Bennie.

6   LADY SMITH: Thank you very much for that, Mr Scott. It's  
7           much appreciated.

8   MR SCOTT: My Lady, the hearings in this case study close  
9           almost one year after they opened and in a different  
10          part of the city now. On behalf of INCAS, I would like  
11          to start this morning by acknowledging the significant  
12          progress made by the Inquiry during this last year,  
13          despite the continuing challenges of Covid restrictions  
14          for most of that time as well as the challenges involved  
15          in relocation.

16          Some of that progress can be seen in what the  
17          Inquiry has been able to publish in a relatively short  
18          period of time. INCAS welcomes the publication during  
19          the past year of the Inquiry's findings from the fifth,  
20          sixth and seventh case studies, those looking at  
21          residential care institutions run by the Benedictines at  
22          Fort Augustus, the findings in relation to the Scottish  
23          Government's response over a 12-year period to petition  
24          PE535 and findings in relation to the Marist Brothers at  
25          St Columba's and St Joseph's.

1           Through the Inquiry's work, and especially its  
2 findings, survivors who have given evidence can continue  
3 to see that the impressions they formed at the time of  
4 giving their evidence of being heard and listened to by  
5 the Inquiry were right. Their testimony has been  
6 documented and accepted by the Inquiry, and in many  
7 cases by those who ran or run the relevant  
8 establishments.

9           At the very least, the evidence of survivors has not  
10 been challenged, even where not necessarily or wholly  
11 accepted by the institutions. For many survivors, the  
12 Inquiry's official confirmation of the fact of serious  
13 abuse in its findings is a powerful vindication and  
14 comfort to them after, often, a lifetime of doubt,  
15 suspicion and accusation.

16           The findings provide validation of their experience  
17 and testimony, as promised in the Inquiry's terms of  
18 reference. That Your Ladyship continues to listen with  
19 care and publish with power, despite the horribly  
20 repetitive nature of much of the abuse, is truly  
21 appreciated by survivors.

22           Publication and reporting of the findings also  
23 continue to contribute to the overall aim and purpose of  
24 the Inquiry in relation to raising public awareness of  
25 the abuse of children in care, particularly during the

1 period covered by the Inquiry.

2 It is also briefly worth mentioning at this moment  
3 of retrospect that from 9 December 2021 Redress Scotland  
4 opened fully the scheme for applications for financial  
5 redress from survivors of historical child abuse in care  
6 in Scotland. While there have been and continue to be  
7 some wrinkles with the arrangements, the fact of that  
8 scheme and the earlier availability of redress through  
9 the Advance Payment Scheme have seen some tangible  
10 progress in this also important area, even if there is  
11 disappointment with some of the offending establishments  
12 who have not yet or have said they will not contribute  
13 funds for the scheme. As Jamie Greene MSP and Shadow  
14 Justice Secretary said of this issue in December last  
15 year:

16 "The Scottish taxpayer should not be footing the  
17 whole bill when many organisations have historically  
18 played a direct part in the horrific abuse of vulnerable  
19 children. Many of these organisations have the  
20 resources to ensure that they can be held accountable  
21 financially for the role they played. They have  
22 provided feeble contributions so far and a simple  
23 apology from them doesn't go far enough."

24 My Lady, on the reporting of the work of the  
25 Inquiry, it is once more worth mentioning the continuing

1 coverage by the Daily Mail, which appears to me to be  
2 the main newspaper to have stuck with the Inquiry and  
3 its work from the beginning. Other media appear to dip  
4 into the work of the Inquiry from time to time, but  
5 Graham Grant and his paper appear to have recognised the  
6 importance of additional public dissemination of the  
7 Inquiry's important work and findings.

8 As he has done at regular intervals during the life  
9 of the Inquiry, Dr Andrew Tickell of Glasgow Caledonian  
10 University has continued to follow its work and publish  
11 powerful articles, the most recent that I could find  
12 being in the Sunday National on 15 August last year,  
13 following the publication of the findings into the  
14 Benedictines in the fifth case study. Given the power  
15 of his words and the fact that I believe they should be  
16 heard more widely than just the readership of that  
17 newspaper, I quote from that piece here:

18 "Across the globe, societies find themselves asking  
19 these questions, as they comb through the history of the  
20 supposedly caring institutions they sanctioned, in which  
21 generations of children were subject to violence and  
22 sexual violence -- from their teachers, from ministers  
23 of religion, from one another. Like its predecessors,  
24 this report tells a harrowing story. Like its  
25 predecessors, its findings deserve to be widely



1 understood, however disturbing or challenging we find  
2 them. We all owe it to the boys who survived these  
3 institutions -- and to the boys who did not -- to listen  
4 to what they have to say. In giving evidence to the  
5 Inquiry, some survivors were relating their experiences  
6 for the first time. It is difficult to overstate their  
7 courage in doing so.

8 Listen to 'Maxwell'. A Fort Augustus boy during the  
9 1960s, he said this about the Inquiry's work: 'I believe  
10 the truth about what happened must be exposed. Exposure  
11 like this can also help to change our world towards  
12 a better place. I wish to help towards providing  
13 an opportunity for future generations to learn about the  
14 nasty practices of the past and to show that such acts  
15 of evil are capable of being committed by apparently  
16 pious men in positions of trust right under our noses'.

17 For all this and more, they deserve our attention.  
18 I still don't think they are receiving it from most of  
19 the Scottish media. Their need to be heard matters more  
20 than our reluctance to listen."

21 I should also record, although I've not mentioned it  
22 in my submissions, that there was an opinion piece in  
23 the Sunday Mail in November of last year, a rather brief  
24 piece, but making a similar point.

25 This and all such coverage of the work of the

1 Inquiry is really crucial to its overall aim and  
2 purpose. Survivors are grateful to those who are  
3 following the work of the Inquiry and keeping it in the  
4 public eye. As Dr Tickell suggested, they wish that  
5 more would do so.

6 Turning to the present case study, the Inquiry has  
7 heard that child abuse happens without respect for  
8 privilege or apparent privilege. The evidence in this  
9 case study represents a powerful challenge to flawed and  
10 lazy assumption to the contrary. Assumption has long  
11 been one of the enemies of survivors of childhood abuse,  
12 or indeed at the time of their abuse. This Inquiry  
13 continues to call it out whenever appropriate and  
14 necessary.

15 The Inquiry has previously heard much of the abuse  
16 of those who were born in poverty or deprivation, whose  
17 families did not or could not care for them, some  
18 without any parental love and support and some who were  
19 abused by members of their own family. While there is  
20 a degree of overlap with some of what was heard in this  
21 case study, the evidence in this case study pushes us to  
22 consider in a wider context perhaps the fundamental  
23 questions about why and how abuse happened. There  
24 appears to have been far less opportunity for the sort  
25 of cross fertilisation of abuse and abusers than

1 previously detailed. Your Ladyship will recall examples  
2 where there were abusers who moved from one  
3 establishment to another and the same practices  
4 happened, and indeed the tragic stories of survivors who  
5 were abused in one establishment and then moved to  
6 another and were abused again. Yet we have heard many  
7 of the same things that happened in the establishments  
8 that have been covered in previous case studies.

9 It is important to reflect on the different  
10 circumstances which can bring a child to a boarding  
11 school, such as those considered in this case study.  
12 These include those placed there from care by way, for  
13 example, of scholarship, as well as those from wealthy  
14 families, as well as those from families who struggled  
15 to make the determined effort to provide their children  
16 with what they expected to be the best opportunities,  
17 the best start in life.

18 LADY SMITH: If a child is abused, Mr Scott, the fact they  
19 come from a wealthy family doesn't make it any better.  
20 It doesn't make the abuse any easier to suffer.

21 MR SCOTT: It does not, my Lady.

22 This case study reminds us that survivors of abuse  
23 lived and live in every part of society. Although the  
24 origins of INCAS were in helping those who were abused  
25 in the care of the state, in a narrower sense, its

1 current membership reflects that wider position and  
2 diversity, with INCAS now supporting survivors of any  
3 setting where abuse has happened, with Keil School  
4 initially and then even during the course of the past  
5 year a survivor from Gordonstoun, who came to seek the  
6 support of INCAS.

7 The evidence regarding Gordonstoun, for example,  
8 shows not only the opportunities for wicked abuse but  
9 how those opportunities can sometimes be created or even  
10 encouraged with the best of intentions. For example,  
11 allowing what can now be seen as excessive and unchecked  
12 autonomy to students in order to "build character".

13 Abuse by fellow students was a marked feature of  
14 some of the evidence was a culture -- I note the helpful  
15 submissions from Ms Grahame on the question of culture  
16 which can be a very great force for good, but it can  
17 have the opposite effect -- which seems to have allowed  
18 the apparently weaker to become victims, for example due  
19 to a perceived lack of physical strength or sporting  
20 prowess.

21 Creating the right culture must be done with great  
22 care and sustaining such a culture requires constant  
23 vigilance which was, we heard, sadly lacking. Many  
24 a blind eye appears to have been turned in honour of the  
25 culture at the time.

1           Similarly, at Keil we heard of the culture there,  
2           this time a culture significantly focused on rugby.  
3           There too there was some evidence of physical abuse by  
4           staff and one witness spoke of sexual assault outwith  
5           school by a teacher from the school, but perhaps the  
6           overriding theme seemed to be the bullying. Keil was  
7           a rugby school. Rugby was the key not only to success  
8           but also to bullying. If you were good at rugby you  
9           would tend to get on. If not, or if you were smaller or  
10          considered weaker, you were bullied.

11          The role of culture within establishments -- where  
12          it comes from, how it develops, how it's pursued and  
13          maintained -- may be one of the developing themes for  
14          final findings.

15          Overall, this case study, my Lady, highlighted again  
16          the need to listen without assumptions or prejudice, and  
17          it further exposed the risks of abuse extending even to  
18          those with loving and supportive families. That could  
19          involve an additional level of betrayal to the abuse of  
20          trust of which we have heard so much in every other case  
21          study.

22          As with the other core participants, my Lady, INCAS  
23          and its members continue to follow and support the work  
24          of the Inquiry, and sometimes that is at considerable  
25          cost to them. The pressure of feeling that they are

1 representing others is something that weighs heavily  
2 with them, as Your Ladyship will well know. But they  
3 remain committed to the Inquiry's aim and purpose.

4 As before, and as Your Ladyship does at regular  
5 intervals and as the Inquiry does at regular intervals,  
6 they wish to encourage survivors who have not yet come  
7 forward to the Inquiry to do so and to contact INCAS as  
8 well as the Inquiry if they wish additional support or  
9 even just the awful reassurance that they are not alone.

10 Thank you, my Lady.

11 LADY SMITH: Thank you very much, Mr Scott. That's very  
12 helpful.

13 Whilst I appreciate that this is not the order in  
14 which you are all sitting, the running order that I have  
15 in front of me is that I would next hear from the  
16 Scottish Ministers, from Ms O'Neill. If that suits you,  
17 Ms O'Neill, please come forward and I'm ready to hear  
18 you now.

19 Submissions by Ms O'Neill

20 MS O'NEILL: Thank you, my Lady, and thank you for the  
21 opportunity to make closing submissions on behalf of the  
22 Scottish Ministers. The Inquiry has the written  
23 submissions that have been prepared and I would invite  
24 the Inquiry to consider those in full. I don't propose  
25 to read them verbatim, my Lady.

1 LADY SMITH: That's helpful. I've read them already,  
2 Ms O'Neill, so do feel free to highlight what you feel  
3 needs to be particularly emphasised.

4 MS O'NEILL: My Lady, the second section of the submissions  
5 deals with the Ministers' interest in this phase of the  
6 Inquiry. I do want to emphasise that Ministers consider  
7 they do have a direct interest in this part of the  
8 Inquiry's work. That interest derives from the  
9 statutory powers and duties that fall to the Ministers  
10 to exercise in relation to independent boarding schools,  
11 including in relation to inspection, registration and  
12 standards of residential care, but more broadly the  
13 government recognises the role that it should and does  
14 play in ensuring the protection of children in all  
15 schools, including independent boarding schools.

16 It has a strong interest in understanding the issues  
17 raised by applicants who were abused in boarding school  
18 settings, with a view to improving the regulatory  
19 system.

20 The Scottish Government understands that the  
21 evidence of survivors may lead the Inquiry in due course  
22 to make recommendations about the further regulation of  
23 boarding schools. As is noted later in these  
24 submissions, the government is taking steps to address  
25 a number of the issues raised during the Inquiry's

1           hearings. It will of course also consider and respond  
2           to any recommendations made by the Inquiry in due  
3           course.

4           Finally, my Lady, the government has a direct  
5           interest in supporting those who were abused while  
6           boarding at an independent school and ensuring that they  
7           secure acknowledgement and accountability for the abuse  
8           that they experienced.

9           My Lady, my learned friend Mr Brown referred to the  
10          importance of understanding what further steps might be  
11          taken as a result of these Inquiry hearings. At various  
12          points in the submissions I do make reference to work  
13          that is being undertaken and to the government's  
14          intention and indeed desire to update the Inquiry when  
15          there is more to be said on those issues.

16          Section 3 of the submission deals with the Scottish  
17          Government's participation in this phase of the  
18          Inquiry's work and a list of items is included in the  
19          submission. There is reference to the various reports  
20          that have been provided on behalf of Education Scotland  
21          and the Registrar of Independent Schools. Reference is  
22          also made to the oral evidence that was given on behalf  
23          of both organisations at the outset of this phase of the  
24          Inquiry's hearings.

25          My Lady, I make reference to a number of requests



1 that were made by the Inquiry for follow up on a number  
2 of issues, both in response to that evidence and also  
3 the evidence of others who have given evidence during  
4 this phase. My Lady, there have been a number of  
5 follow-up papers, particularly from Disclosure Scotland  
6 and from Education Scotland. I would again invite the  
7 Inquiry to have regard to that material in its entirety.

8 My Lady, I turn briefly to the abuse suffered by  
9 children accommodated in boarding schools, and I say  
10 "briefly" with no disrespect. As with other phases of  
11 the Inquiry, the Scottish Government has not been  
12 actively involved in the taking of evidence from  
13 survivors of abuse and has not sought at any stage to  
14 test or challenge the veracity of the evidence given by  
15 applicants. In those circumstances, the Ministers do  
16 not make detailed submissions on the evidence of abuse  
17 heard by the Inquiry or propose that the Inquiry make  
18 particular findings in fact in respect of the accounts  
19 that have been given.

20 What can be said is that it is clear that a large  
21 number of children suffered serious sexual, physical and  
22 emotional abuse and neglect when in the care of the  
23 boarding schools to which they had been entrusted.  
24 Their accounts have been heard by Scottish Government,  
25 those accounts were powerful and were in many cases

1 difficult to listen to, and no more difficult to listen  
2 to no doubt than they were difficult to convey by the  
3 survivors themselves.

4 As in earlier stages of this Inquiry, the Scottish  
5 Government wishes to acknowledge the courage of all the  
6 survivors who gave evidence about their experiences and  
7 about the impact of childhood abuse on their future  
8 lives and to record its gratitude to them for  
9 contributing to this Inquiry.

10 My Lady, section 5 summarises a number of issues and  
11 themes arising from the evidence given to the Inquiry in  
12 this phase and I won't list those, because I turn to  
13 each of them individually in the subsequent sections.

14 The following submissions set out the Scottish  
15 Government's current position on those issues and, where  
16 appropriate, the government's proposals for further  
17 action in response to the issues raised during the  
18 Inquiry hearings.

19 Mr Brown has already referred to the issue of  
20 information-sharing, and information sharing including  
21 disclosure and the PVG scheme is the first theme  
22 addressed by the submissions.

23 It's acknowledged that the sharing of information  
24 amongst schools, regulators and others for the purposes  
25 of maintaining and promoting child welfare and

1 protection was a recurring theme in the hearings in this  
2 phase of the Inquiry's work. That was particularly the  
3 case during the hearings which considered the regulatory  
4 framework governing the management and operation of  
5 independent schools.

6 Scottish Ministers remain of the view that the  
7 exchange of information among Education Scotland, the  
8 Care Inspectorate and the registrar on the whole  
9 operates well and the information is shared on  
10 an ongoing and regular basis.

11 Education Scotland takes account of information  
12 provided by the Care Inspectorate and the registrar when  
13 making decisions on inspection activity for independent  
14 schools, and the Inquiry has also been provided with the  
15 memorandum of understanding between Education Scotland  
16 and the Care Inspectorate concerning co-operation and  
17 the sharing of information.

18 I think the version --

19 LADY SMITH: Ms O'Neill, thus put that exchange of  
20 information amongst Education Scotland, Care  
21 Inspectorate and the registrar on the whole operates  
22 well sounds a little qualified. Is that intended?

23 MS O'NEILL: My Lady, I think it would not be right for me  
24 to submit that it always operates perfectly and that  
25 would not be my submission to the Inquiry. It's also

1       acknowledged, and acknowledged without reservation, that  
2       these arrangements ought always to be kept under review  
3       and improvements looked to. My Lady, the reference to  
4       the memorandum of understanding being updated is one  
5       example of that. I think that the version that the  
6       Inquiry currently has is from 2018. Despite one might  
7       say that's relatively youthful, it is nevertheless  
8       currently the subject of revision and again Ministers  
9       are happy and will provide the Inquiry with the updated  
10      version of that memorandum of understanding when it is  
11      finalised.

12             My Lady, I'm conscious that --

13   LADY SMITH: When is that likely to be?

14   MS O'NEILL: My Lady, I'm told that an updated version --  
15       this is not intended to exculpate Ministers or implicate  
16       anyone else, but the version that has been revised is  
17       with the Care Inspectorate at present for them to  
18       signify their agreement to or otherwise, so it has been  
19       done, but I can't give the Inquiry a date by which that  
20       will be finalised.

21   LADY SMITH: Thank you.

22   MS O'NEILL: My Lady, I also should make reference to  
23       information-sharing among other agencies which are not  
24       the direct responsibility of the Scottish Government.  
25       I'm very conscious of the references that have been made

1 in the submissions for Police Scotland and GTCS about  
2 the recent decision of Lord Uist on this topic.

3 My Lady, what I can say about that is that the  
4 Scottish Government was not involved in that case and  
5 that would be normal, information sharing, issues  
6 amongst organisations take place amongst those  
7 organisations, but Scottish Government is aware of that  
8 case. There have already been discussions facilitated  
9 by Scottish Government involving a number of  
10 organisations, including Police Scotland and GTCS, about  
11 the case, and there's another meeting, my Lady, I'm told  
12 organised for 3 March this year, which will also involve  
13 the Information Commissioner's office and which is being  
14 organised by the Scottish Government.

15 LADY SMITH: That's very helpful. As far as I'm aware, the  
16 decision isn't being reclaimed. Do you know if I'm  
17 right about that?

18 MS O'NEILL: I'm not aware of that, my Lady, and I don't  
19 have instructions on this point from Ministers. I'm  
20 aware of the case from other professional commitments  
21 and I'm conscious that it was a decision that was made  
22 in the context, I believe, of an application for  
23 expenses.

24 LADY SMITH: Yes.

25 MS O'NEILL: Without saying more, my Lady, I think there are

1 aspects of that decision which are of wider concern and  
2 surprise to other organisations, which is probably as  
3 much as I might say.

4 LADY SMITH: Very well, thank you.

5 MS O'NEILL: My Lady, I then turn to the raising of concerns  
6 and the Scottish Government acknowledges the evidence  
7 given by a range of witnesses about uncertainty or  
8 confusion about the routes by which concerns about child  
9 protection or inadequacies in the service provided by  
10 independent schools should be raised.

11 What I say is that in March of last year, after the  
12 registrar and Education Scotland had given evidence,  
13 Education Scotland also provided the Inquiry with  
14 information relating to the independent review of the  
15 closure of the new school Butterstone, and that review  
16 also made recommendations about the publishing of clear  
17 guidance, and in plain English, on complaint procedures  
18 for independent schools, and indeed so that that would  
19 be done in a way that parents and carers would  
20 understand.

21 LADY SMITH: Just for the record, I think that's at pages 64  
22 to 65 of the review report. You may not have a note of  
23 that.

24 MS O'NEILL: I don't have a note of it. I'm sorry, my Lady,  
25 I've cited just the SGV reference from the Inquiry's

1 document. If there is any doubt about that we can  
2 clarify that.

3 In response to that, there was further guidance  
4 published in March 2021, it's called the registration of  
5 independent schools' guidance for applicants,  
6 proprietors and parents. It does have a new section,  
7 which specifically details the responsibilities of  
8 relevant bodies and how concerns about independent  
9 schools can be raised. It includes sections on  
10 safeguarding, complaint management, the handling of  
11 closures and mediation as well as frequently asked  
12 questions for parents. That has been provided to the  
13 Inquiry.

14 In addition, my Lady, and having reflected on the  
15 evidence heard at the Inquiry and having considered  
16 existing policy -- that includes, my Lady, policy  
17 updated in September of last year on child protection --  
18 the Scottish Government has asked the Registrar of  
19 Independent Schools to draft and produce specific  
20 guidance for proprietors for both day and boarding  
21 schools so that they have a further resource to inform  
22 and support them in their role of overseeing and  
23 scrutinising schools' approaches to child protection and  
24 safeguarding. The work to produce that guidance is  
25 underway.

1           The Scottish Government does consider that existing  
2           resources make clear when and to whom concerns should be  
3           raised, but nevertheless, my Lady, it is acutely  
4           conscious that doubts or uncertainty create risks for  
5           children and should be addressed. The intention is that  
6           the guidance will set out in as clear terms as possible  
7           when independent schools should raise concerns and with  
8           which regulators and agencies. That will also set out  
9           and reiterate the obligations and expectations of the  
10          Scottish Government in terms of recruitment practices,  
11          which is something I deal with later, and it will also  
12          explain where schools can obtain advice and support on  
13          whether and when to raise concerns.

14           That guidance will involve input from the  
15          Inspectorate, from the Care Inspectorate and from other  
16          relevant stakeholders, including the Scottish Council of  
17          Independent Schools. It is anticipated that that  
18          guidance will be available before the beginning of the  
19          next academic year.

20           My Lady, finally the government is also conscious of  
21          the discussions --

22   LADY SMITH: Sorry, that would be available by -- well, this  
23          summer?

24   MS O'NEILL: Indeed so.

25   LADY SMITH: The academic year will begin around the end of



1 August/September?

2 MS O'NEILL: Yes, my Lady, that's the intention.

3 There has been discussion, my Lady, during the  
4 Inquiry hearings on the issue of mandatory reporting.  
5 Now, there is already a regime of mandatory reporting in  
6 certain respects, so, for example, the obligation of  
7 independent boarding schools to notify the Care  
8 Inspectorate of notifiable circumstances. Other  
9 notification is a matter of good practice.

10 The Scottish Government remains of the view that the  
11 current arrangements for mandatory reporting are  
12 sufficient, coupled with existing powers and practices  
13 in relation to information sharing among regulators.  
14 However, the government will of course take seriously  
15 any recommendations that the Inquiry makes on this  
16 issue.

17 I should say, however, it is the view of the  
18 Scottish Government that consideration of further  
19 mandatory obligations should be undertaken in a wider  
20 context and include consideration of mandatory reporting  
21 in day schools and in the state sector. I appreciate,  
22 my Lady, that may not be a matter for this Inquiry, but  
23 any recommendations about mandatory reporting would be  
24 considered in that wider context.

25 LADY SMITH: Do you know whether Scottish Ministers have

1 taken account of and have regard to the seminar reports  
2 from the Independent Inquiry into Child Sexual Abuse  
3 taking place in England? There's quite a helpful House  
4 of Commons briefing paper on the matter, and of course  
5 Wales have decided on a form of mandatory reporting. Is  
6 this all under consideration?

7 MS O'NEILL: My Lady, I can't say to the Inquiry in response  
8 to those specific matters that those have been  
9 considered by those instructing me. I would be  
10 surprised if they had not, but I am not in a position to  
11 confirm that and I'm happy to have those instructing me  
12 write to the Inquiry on this point, if that would be of  
13 assistance.

14 LADY SMITH: They may not need to write to us, it's material  
15 that's all publicly available, and certainly the IICSA  
16 material and the House of Commons briefing paper capture  
17 the pros and cons of mandatory reporting I think very  
18 helpfully.

19 MS O'NEILL: My Lady, I'll ensure that those, if they are  
20 not being considered, are brought to the attention of  
21 those dealing with this issue.

22 LADY SMITH: Thank you.

23 MS O'NEILL: My Lady, on notification of concerns to  
24 Disclosure Scotland, the submissions make reference to  
25 specific evidence that was given by Mr Shaw of the Queen

1 Victoria School about uncertainty in terms of sharing  
2 information with Disclosure Scotland.

3 Disclosure Scotland's submission of February of last  
4 year to the Inquiry dealt with the process of  
5 consideration for listing and the operation of ongoing  
6 monitoring of the PVG scheme. It didn't deal with the  
7 referral process.

8 Again, my Lady, further detailed information can be  
9 provided if that would be of assistance, but in summary,  
10 Disclosure Scotland has published guidance on its  
11 website about when and how organisations should make  
12 a referral in cases where an individual who is or has  
13 been doing regulated work has been dismissed or  
14 permanently transferred from that regulated work  
15 following disciplinary action being taken against them  
16 relating to harm or risk of harm caused by them to  
17 a child or a protected adult.

18 Since 2018, Disclosure Scotland has provided free  
19 training for employers on their referral obligations and  
20 this has continued virtually while coronavirus  
21 restrictions have been in place. Disclosure Scotland  
22 has also engaged directly with the Scottish Council for  
23 Independent Schools, through SCIS conferences and  
24 specific discussion with SCIS members to reinforce with  
25 members the circumstances in which a referral to

1 Disclosure Scotland must be completed.

2 I note simply for completeness that in 2016  
3 Disclosure Scotland also met with representatives of  
4 Queen Victoria School on issues relating to the  
5 disclosure process.

6 There has been evidence given previously through the  
7 papers submitted by Disclosure Scotland on the  
8 Disclosure (Scotland) Act 2020.

9 LADY SMITH: Yes, what's happening?

10 MS O'NEILL: My Lady, the first commencement order was made  
11 on 28 October last year. It came into force on  
12 10 December, and it does make or has the effect of  
13 making some changes to the consideration for listing  
14 process, making it clear that the offences in part 1 of  
15 the Act apply to organisations based outside Scotland  
16 offering regulated work in Scotland to a barred  
17 individual, and allowing the Ministers to consult with  
18 Police Scotland about statutory guidance under the 2020  
19 Act and the PVG Act.

20 However, the Act has not been fully commenced and  
21 therefore there are to date no significant changes to  
22 the disclosure system, including the PVG scheme, as it  
23 was operating prior to the 2020 Act. It is anticipated  
24 that the Act will be fully implemented by 2024.

25 LADY SMITH: By 2024?

1 MS O'NEILL: 2024, my Lady.

2 LADY SMITH: Why so long?

3 MS O'NEILL: My Lady, I don't have information about the  
4 reasons why full implementation will take until 2024.  
5 Clearly there are a range of measures included in the  
6 2020 Act and those require to be conveyed to all of the  
7 organisations who will be using the PVG scheme. I don't  
8 understand, my Lady, the position to be that nothing  
9 will be done until 2024, but it is an ongoing process.

10 My Lady, I turn then to the issue of inspections.

11 The Scottish Ministers are conscious that the  
12 Inquiry has indicated on several occasions that the  
13 adequacy of inspection regimes generally is a topic that  
14 it will consider at a later stage.

15 These submissions are therefore relatively brief so  
16 far as they concern the issue of inspections, but there  
17 are a number of matters that Ministers would wish to  
18 draw to the Inquiry's attention in respect of  
19 inspection.

20 First, my Lady, and as the Inquiry may be aware, the  
21 cabinet secretary for education and skills announced in  
22 June last year that there would be a reform of Education  
23 Scotland and the Scottish Qualifications Authority.  
24 That will include the removal of the inspection function  
25 from Education Scotland, and that is part of the

1 Scottish Government's response to recommendations made  
2 by the OECD's review of the implementation of the  
3 Curriculum for Excellence.

4 Professor Ken Muir was appointed in August last year  
5 to act as an independent advisor to the Scottish  
6 Government on the programme of reform and has, following  
7 a period of consultation, submitted his recommendations  
8 to the Scottish Government.

9 The government is considering those recommendations  
10 and expects to publish the report in the spring, when  
11 the cabinet secretary will set out the government's  
12 response to Parliament. Again, the Scottish Ministers  
13 will provide further information to the Inquiry on the  
14 proposals for change to the inspection regime when it is  
15 able to do so.

16 Second, my Lady, there is a reference to a change in  
17 the inspection power which had been a change from a duty  
18 to conduct inspections that previously existed under the  
19 Education (Scotland) Act of 1962 and substituted with  
20 a power to conduct inspections.

21 My Lady, the submissions make reference to the  
22 change in legislative scheme simply for completeness  
23 because it was referred to in evidence, but it's for the  
24 Inquiry's information and for completeness rather than  
25 for anything else.

1           My Lady, there was also evidence given about the  
2           number of inspections that take place in any given year,  
3           and by way of update, my Lady, no routine school  
4           inspections have taken place since March 2020 because of  
5           the Covid pandemic. Prior to that, HMIE had  
6           strengthened its scrutiny function and had increased the  
7           number of inspections to more than 250 a year.

8           Inspections were expected to resume at that level of  
9           more than 250 per academic year in January of this year,  
10          and plans had been made on that basis. Those plans were  
11          delayed because of the change in circumstances relating  
12          to COVID-19 and the ongoing challenges faced by schools  
13          dealing with the pandemic. The position remains under  
14          review by reference to public health guidance and HMIE  
15          remains committed to reviewing on an annual basis the  
16          scale and number of inspections.

17          Finally, there was discussion during Inquiry  
18          hearings about the sharing of best practice arising from  
19          inspections. As noted in Education Scotland's response  
20          to the Inquiry in January of this year regarding  
21          Gordonstoun School -- that was one of the matters in  
22          respect there had been a specific request made of the  
23          Inquiry for information -- inspectors promote  
24          improvement in Scottish education by sharing best  
25          practice identified through inspection. Where they

1 identify sector-leading and outstanding practice in any  
2 school, they highlight that in their published reports  
3 to direct other schools towards that practice.

4 They also publish case studies and examples of  
5 highly effective practice on the Education Scotland  
6 website and include examples within national thematic  
7 inspection reports.

8 In recent years, HM Inspectors have increased the  
9 sharing of highly effective practice using graphic  
10 illustration and narrative descriptions, known as sketch  
11 notes --

12 LADY SMITH: I think that's the first I've heard of sketch  
13 notes. What are they?

14 MS O'NEILL: They are, my Lady, effectively summaries of  
15 that good practice and, as the submissions note, there  
16 have been more than 55 in the last three years. Again,  
17 we'll direct the Inquiry team to where they occur, but  
18 it is a further attempt by Education Scotland to produce  
19 material that is accessible and useful to the wider  
20 sector.

21 My Lady, the next section of the submissions deals  
22 with staff and recruitment and GTCS registration.

23 There was a discussion during the evidence of  
24 Ms McManus of Education Scotland about how issues  
25 concerning underperformance of a teacher or conduct by



1 a teacher towards children would be dealt with if that  
2 was identified in the course of an inspection. The  
3 submission deals both with teacher underperformance and  
4 with conduct.

5 In relation to teacher underperformance, further  
6 amendments were made in October of last year to the  
7 Registration of Independent Schools Scotland Regulations  
8 of 2006 and as a result the particulars that must be  
9 included in any application for registration of  
10 an independent school, and indeed any information that  
11 has to be provided to the registrar as part of the  
12 annual census, includes a statement confirming that all  
13 proposed teachers are included in the GTCS register.

14 Before an independent school can be registered, HMIE  
15 must carry out a pre-registration visit during which  
16 they seek verbal reassurance that all named teachers are  
17 GTCS-registered. They seek the same reassurance during  
18 post-registration visits.

19 Education Scotland and HMIE do not currently refer  
20 teachers directly to GTCS. For independent schools,  
21 when an inspector observes a teacher's practice and  
22 considers that there is cause for concern, that will be  
23 reported to the head of the establishment and may also  
24 be reported to the registrar. The Ministers remain of  
25 the view that underperformance is a matter that falls

1 principally within the responsibility of the employer  
2 and it is for the employer to make the reference to  
3 GTCS.

4 In relation to inappropriate conduct by a teacher,  
5 the particulars that must be included in any application  
6 for registration of an independent school and again  
7 provided in the annual census includes the school's  
8 child protection policy and procedure, a statement of  
9 the school's policy and practice on seeking scheme  
10 records issued under the Protection of Vulnerable Groups  
11 (Scotland) Act 2007, including a statement detailing  
12 what checks are made in respect of all persons doing or  
13 to be doing regulated work with children, and  
14 a statement confirming that scheme records issued by the  
15 Scottish Ministers under the Act appropriate to the  
16 position have been obtained and are in accordance with  
17 the school's child protection policy and procedure.  
18 That's in respect of the proprietor, all proposed  
19 teachers and all other persons doing or to be doing  
20 regulated work with children relative to the school.

21 In the event of a disclosure or child protection  
22 concern arising during inspection, inspectors will  
23 follow the school's safeguarding and child protection  
24 procedures, and that will mean informing the headteacher  
25 and/or designated child protection co-ordinator, so long

1 as neither is implicated in the complaint itself.

2 In line with the school's procedures, the inspectors  
3 expect the school to report the incident to the relevant  
4 agencies with statutory responsibility for investigating  
5 child protection. Inspectors will need to be assured  
6 that the appropriate procedures have been followed by  
7 the school. In the case of a serious child protection  
8 concern, inspectors would not leave the school until  
9 satisfied that those procedures had been followed.

10 Where inspectors are concerned that the school has  
11 not followed the appropriate procedures, they would  
12 notify the Local Authority or the proprietor and  
13 inspectors will then need to be satisfied that the Local  
14 Authority or the proprietor has taken the appropriate  
15 action. If that was not done, inspectors would notify  
16 the authorities themselves.

17 Education Scotland is not aware of any occasion when  
18 a school has failed to notify the appropriate agencies  
19 when a disclosure has been made during an inspection.

20 My Lady, the next part of the submission deals with  
21 how there would be a response to weaknesses identified  
22 in the school's child protection policy. It's noted,  
23 finally, that at all times it remains open to Ministers  
24 to exercise statutory powers of intervention under the  
25 1980 Act, including in respect of welfare concerns.

1           Finally, my Lady, on the issue of recruitment,  
2           evidence was given by a former headteacher of Queen  
3           Victoria School to the effect that she had not seen  
4           a reference for anyone appointed to the school whilst  
5           she was in post, as that would be a matter for HR and  
6           business managers in the school.

7           The Scottish Government considers that recruitment  
8           of staff in independent schools is a matter for the  
9           proprietor and it is for the proprietor to satisfy  
10          themselves that they have satisfied all requirements  
11          incumbent upon them as employers.

12          However, in light of the evidence heard at the  
13          Inquiry, the guidance being developed by the Registrar  
14          of Independent Schools and referred to earlier will  
15          address the issue of employee references.

16          My Lady, on the use of specialist language and  
17          terminology, the government is conscious that evidence  
18          has been given about the language used in inspection  
19          reports and the value of those reports to non-specialist  
20          readers, including parents and others. Some of that  
21          evidence related to language used in Care Inspectorate  
22          reports, and the Care Inspectorate may wish to respond  
23          to that separately.

24          In relation to HMIE inspection reports, and as  
25          explained in the reports submitted already in response

1 to the Inquiry's section 21 notice, HMIE publishes two  
2 kinds of reports. A report in the format of a letter  
3 for parents and a more detailed document outlining the  
4 summarised inspection findings. Education Scotland does  
5 have a commitment to plain English and considers that  
6 the letter for parents, in particular, reflects that  
7 commitment.

8 My Lady, that's not to indicate any complacency, and  
9 again the government and the Education Scotland have  
10 heard the evidence that has been given about plain  
11 English and has taken that on board.

12 My Lady, finally, reference has been made to the  
13 language around GIRFEC and the terminology used in  
14 relation to GIRFEC. Scottish Ministers remain committed  
15 to the GIRFEC approach and consider it's a valuable  
16 approach to government policy on children in a range of  
17 areas.

18 If the Inquiry does have concerns about GIRFEC or  
19 wants anything further from the government by way of  
20 information or explanation for its commitment to that  
21 approach, then it would be glad to provide that.

22 LADY SMITH: Thank you.

23 MS O'NEILL: My Lady, on the register of independent  
24 schools. There is a reference to a technical question  
25 about the term "proper person" and the government's

1           commitment to look at whether "proper person" can be  
2           further clarified by way of legislative amendment or by  
3           guidance.

4   LADY SMITH:   You're saying they will look into that?

5   MS O'NEILL:   They are, my Lady, yes.   Yes.

6   LADY SMITH:   I think there are difficulties with the use of  
7           that term.

8   MS O'NEILL:   My Lady, I think the government's position is  
9           that it may be that this is capable of being clarified  
10          with further guidance, but it's not against  
11          a legislative clarification, if that is the way to  
12          achieve the necessary clarity.

13                My Lady, the last part of the submissions deals with  
14          just two further issues which are not directly related  
15          to boarding schools but are part of the wider context  
16          and which formed part of the submissions at the opening  
17          of this phase.

18                In those opening submissions I made reference to the  
19          United Nations Convention on the Rights of the Child  
20          (Incorporation) (Scotland) Bill.  That bill was passed,  
21          but as the Inquiry will be aware, it was not given royal  
22          assent because prior to assent it was referred to the UK  
23          Supreme Court on a number of grounds.  As a result of  
24          the Supreme Court's ruling, the bill cannot receive  
25          royal assent in its current form.  The government

1 remains committed to the incorporation of the Convention  
2 to the maximum extent possible as soon as practicable  
3 and notwithstanding the Supreme Court's judgement, the  
4 majority of work, practical work, in relation to  
5 implementation of the Convention is continuing.

6 The government's preference is to address the  
7 Supreme Court's judgement by returning the bill to  
8 Parliament using the reconsideration stage process set  
9 out in the Parliament standing orders and it will  
10 undertake engagement with stakeholders, children and  
11 young people before final decisions are made.

12 My Lady, it's an issue which is under active  
13 consideration and work by the government.

14 Finally, my Lady, in the opening submissions the  
15 government also referred to the bill that had been  
16 passed by Parliament to establish a redress scheme to  
17 provide financial redress to eligible survivors of  
18 abuse, including survivors who boarded at an independent  
19 school where they had both their care arranged and fees  
20 paid by an education authority or care provider.

21 LADY SMITH: I think it's fair to say, Ms O'Neill, that that  
22 will be a small minority of boarding school survivors.

23 MS O'NEILL: (Nodded)

24 LADY SMITH: By far the majority of them do not have access  
25 to the redress scheme; is that right?

1 MS O'NEILL: I believe that to be correct, my Lady.

2 LADY SMITH: Thank you.

3 MS O'NEILL: My Lady, as my learned friend Mr Scott has  
4 already noted, the redress scheme opened for  
5 applications at the end of last year.

6 My Lady, those are the submissions on behalf of the  
7 Ministers, unless I can assist Your Ladyship further.

8 LADY SMITH: I have no further questions.

9 Thank you very much, Ms O'Neill.

10 MS O'NEILL: Thank you, my Lady.

11 LADY SMITH: I think we should probably take the morning  
12 break now, Mr Brown, looking at the running order, would  
13 that be right?

14 MR BROWN: Yes.

15 LADY SMITH: Also it would enable us to check the WebEx  
16 link, because Mr Blair who is going to present  
17 submissions for the Care Inspectorate is joining us on  
18 the screen.

19 MR BROWN: I think that's very wise, thank you.

20 LADY SMITH: I'll rise now and if we can sit again by  
21 11.30 am.

22 (11.15 am)

23 (A short break)

24 (11.34 am)

25 LADY SMITH: As you may all have heard, I think we have



1 a slight glitch with WebEx, but we're trying to sort it  
2 out.

3 MR BROWN: Gremlins have appeared at the last gasp.

4 LADY SMITH: We'll do a leapfrog to the next set of closing  
5 submissions and, according to my running order, that  
6 would make it the GTCS, and that's -- is that right?

7 MR BROWN: I think it's SSSC, my Lady.

8 LADY SMITH: Oh. Oh you're quite right, I missed a bullet  
9 point. SSSC, that's the Scottish Social Services  
10 Council.

11 Mr Weir, I think you're here for them.

12 Thank you.

13 Submissions by Mr Weir

14 MR WEIR: Thank you, my Lady, for the opportunity to provide  
15 closing submissions to the Inquiry for this phase on  
16 behalf of the SSSC.

17 LADY SMITH: I don't think your microphone is on.

18 It's just not in the right position. That's better,  
19 thank you.

20 MR WEIR: This submission is brief, given the limited scope  
21 of the SSSC's evidence. Your Ladyship heard from  
22 Lorraine Gray, our chief executive, and Maree Allison,  
23 director of regulation. Your Ladyship also had the  
24 benefit of a detailed submission from the SSSC, which  
25 sets out the history and establishment of the SSSC, our

1           role in the regulation of residential school care  
2           accommodation and the fitness to practice process when  
3           concerns about a social service worker are raised with  
4           us.

5           I don't intend to invite Your Ladyship to make  
6           specific findings in fact about the evidence relating to  
7           the SSSC or our functions, however I would like to  
8           provide you with an update on matters raised by counsel  
9           during evidence, which I hope Your Ladyship will find  
10          helpful.

11          I am also grateful that counsel referred Your  
12          Ladyship to at least part of that update in his  
13          introduction this morning.

14          Firstly, counsel for the Inquiry very helpfully  
15          observed that five years seems like a long period for  
16          someone to obtain the qualification needed to practice.  
17          Your Ladyship heard that this was due to the challenges  
18          of registering the large number of people in this sector  
19          and embedding the concept of mandatory qualifications  
20          within an existing workforce. Your Ladyship also heard  
21          that this was something that we are beginning to  
22          examine. In December 2021 we launched a consultation on  
23          a programme of work reviewing and simplifying the  
24          register and qualifications, including the time allowed  
25          for the workforce to get qualified. This is

1 a significant programme of work that will require  
2 legislative change to implement and we are in  
3 discussions with our sponsor department at the Scottish  
4 Government about how we take this forward.

5 Secondly, counsel very helpfully highlighted  
6 a tension in our guidance for employers on fitness to  
7 practice referrals around when it is mandatory for them  
8 to make reference. We have updated the guidance for  
9 employers to clarify the mandatory nature of those  
10 referrals.

11 The SSSC is committed to continually reviewing and  
12 improving how we regulate the Social Services workforce.  
13 We welcome any recommendations that Your Ladyship makes  
14 in this area.

15 Thank you, my Lady. Those are my closing  
16 submissions on behalf of the SSSC, unless I can be of  
17 any further assistance to you.

18 LADY SMITH: That's all I have for you. Thank you very  
19 much, Mr Weir.

20 That, now, I think takes me to Ms Kearney for GTCS.

21 Submissions by Ms Kearney

22 MS KEARNEY: Good morning, my Lady.

23 The General Teaching Council for Scotland wish to  
24 thank the Inquiry for permitting it to participate in  
25 this case study into the abuse at Scottish boarding

1 schools.

2 While this case study is focused upon the  
3 independent and boarding sector, the issues raised are  
4 relevant to the education system as a whole.  
5 Accordingly, the lessons learned from this case study  
6 can be applied across the whole of the education sector  
7 and effect real improvements in child protection  
8 practices within Scotland's care and education sectors.

9 With this wider application in mind, these closing  
10 submissions will address the following two key areas of  
11 concern to GTC Scotland. The apparent misunderstandings  
12 on the part of some parties relating to the role of GTC  
13 Scotland within Scottish education and as part of the  
14 regulatory landscape. Together with the lack of any  
15 identified system regulation for education service  
16 providers and schools in Scotland, this can result in  
17 a failure to provide a coherent and joined-up approach  
18 to ensure child and public protection.

19 Deficiencies and failings in the way that  
20 information flows and is shared between and across the  
21 various agencies and bodies that are involved in  
22 safeguarding and public protection in Scotland,  
23 including Local Authorities, independent schools, Police  
24 Scotland, Disclosure Scotland and regulators.

25 In making these submissions, GTC Scotland is focused

1 upon the future, identifying areas where improvements  
2 can be made going forward, informed by learning from the  
3 past. GTC Scotland hopes to bring to the attention of  
4 the Inquiry any learning or development that may be  
5 required in order that the Inquiry can consider whether  
6 it is necessary to make any recommendations when  
7 preparing its report on this particular case study.

8 From the tenor of the evidence given to the Inquiry  
9 by some of the other parties, there appears to be some  
10 misunderstanding relating to GTC Scotland's role.

11 GTC Scotland is an independent, statutory body. It  
12 was created in 1965 through the Teaching Council  
13 (Scotland) Act 1965. Its role and functions and  
14 independence were updated and clarified through The  
15 Public Services Reform (General Teaching Council for  
16 Scotland) Order 2011. GTC Scotland is a professional  
17 regulator, its core function is to keep a register of  
18 teachers and set the standards of conduct and competence  
19 expected of its registrants and enforce this through  
20 a fitness to teach process.

21 GTC Scotland does not have a role in monitoring or  
22 managing the employment of teachers. Employers are  
23 responsible for checking and ensuring that any teacher  
24 they employ is and remains suitably registered with GTC  
25 Scotland as required by statute.

1           Similarly, GTC Scotland has no role in monitoring or  
2           managing schools or employers of teachers and has no  
3           role in verifying that they do what is required of them.

4           GTC Scotland has no locus in investigating how  
5           an employer has dealt with an issue regarding one of its  
6           employees, nor of monitoring the consistency of employer  
7           investigations. The regulation of education as a whole  
8           system is not a function that sits with GTC Scotland as  
9           a regulator of individual professionals.

10   LADY SMITH: I appreciate the point you've just made,  
11           Ms Kearney, but in the course of fitness to practice  
12           hearings, does GTC Scotland show any interest in evidence about  
13           how the school has reacted to the matters that have  
14           arisen that have brought a teacher before GTC Scotland?

15   MS KEARNEY: During the fitness to teach processes they will  
16           take evidence from the employer, any support that's been  
17           given, any issues that have come up in the school and  
18           will consider that in their determination of the case,  
19           yes.

20   LADY SMITH: So it is a place where the school's reaction  
21           can be explored?

22   MS KEARNEY: Yes.

23   LADY SMITH: Albeit for the purpose of a single issue about  
24           fitness to practice, and these hearings are generally in  
25           public?

1 MS KEARNEY: Yes, that's right, so they would be by default  
2 in public. Yes, as Your Ladyship says, it would be  
3 a place to explore it, but GTC Scotland then has no locus to  
4 take it any further.

5 LADY SMITH: Yes.

6 MS KEARNEY: A person who employs a registered teacher in  
7 an education establishment must notify GTC Scotland if  
8 they dismiss the registered teacher on grounds of  
9 misconduct or incompetence or if a registered teacher  
10 resigns or leaves employment in circumstances where such  
11 a dismissal was possible. However, these are the only  
12 circumstances in which an employer is legally obliged to  
13 refer a case to GTC Scotland and no other person, agency  
14 or body is obliged by law to make a fitness to teach  
15 referral to GTC Scotland.

16 Given that GTC Scotland's statutory framework is  
17 predicated on an assumed trust and confidence in the  
18 employers of teachers and its regulatory effectiveness  
19 relies on the co-operation and actions of the employers  
20 in particular, the fact that there is no clear,  
21 identified and accountable regulator of education  
22 service providers and schools is an area of concern.

23 Put simply, what happens when an education service  
24 provider or school breaches the trust that has been  
25 placed in them and does not do what is required of them,

1 or where there is a systematic shortfall or wrongdoing?

2 We would ask the Inquiry to bear all of this in mind  
3 when considering what recommendations it wishes to make.

4 GTC Scotland also continues to have concerns about  
5 deficiencies and failings in the way that information  
6 flows and is shared between and across the various  
7 agencies and bodies that have a role to play in  
8 safeguarding children in Scottish boarding schools and  
9 within the education setting as a whole.

10 GTC Scotland's regulatory effectiveness depends to  
11 a large extent upon the co-operation and actions of  
12 others.

13 GTC Scotland is not on the front line of child and  
14 public protection. It does not deliver education or  
15 provide services to children and families.

16 As noted already, GTC Scotland does not regulate  
17 schools and has no power to go into schools and audit or  
18 inspect them to check that they are doing what is  
19 required of them. Although employers are under a duty  
20 to provide information to GTC Scotland when requested,  
21 GTC Scotland has no power to compel individuals to give  
22 it information for or attend its fitness to teach  
23 proceedings. It has to apply to the Court of Session  
24 for this.

25 Sharing of relevant information by other agencies



1       involved in child and public protection is essential to  
2       enable GTC Scotland to perform its regulatory function  
3       effectively.

4             GTC Scotland and other regulators have for many  
5       years experienced challenges with information sharing  
6       amongst and between relevant agencies, for example,  
7       Police Scotland. GTC Scotland has also experienced  
8       challenges with the lack of provision of ongoing  
9       monitoring information and restrictive  
10       information-sharing practices by Disclosure Scotland as  
11       part of the Protecting Vulnerable Groups scheme. We are  
12       aware that other parties have provided evidence to the  
13       Inquiry of similar experience in this respect.

14            The recent Opinion of Lord Uist in GTC Scotland v  
15       Chief Constable of the Police Service of Scotland is  
16       a good example of the difficulties that GTC Scotland  
17       commonly encounters. A copy of this Opinion has been  
18       attached to the submissions for ease of reference.

19   LADY SMITH: Is that being taken any further? Is it being  
20       reclaimed, do you know?

21   MS KEARNEY: We've been given information that it's not  
22       being reclaimed, my Lady.

23   LADY SMITH: Thank you very much.

24   MS KEARNEY: Lord Uist comments at paragraph 32 of his  
25       Opinion where he states that the position adopted by the

1 chief constable as well as the advice provided to him by  
2 the ICO were clearly wrong in law, confirms GTC  
3 Scotland's concerns how the applicable legislation is  
4 being interpreted and applied in practice by these other  
5 agencies and bodies.

6 This strict and often incorrect application of data  
7 protection legislation operates as a barrier rather than  
8 an enabler for public protection. This then creates  
9 a gap and areas of risk.

10 On GTC Scotland's role, Lord Uist commented at  
11 paragraph 32 of his Opinion:

12 "The petitioner was a body operating in the field of  
13 public safety as it is responsible for ensuring that  
14 people who are a danger to children are not permitted to  
15 remain on the register and so not permitted to continue  
16 to teach."

17 Despite the Court of Session outcome, we are yet to  
18 experience material change in information-sharing  
19 practices, so the difficulties that we highlighted to  
20 the Inquiry at the outset still persist.

21 The Inquiry is in a unique position in being able to  
22 take a holistic overview of how --

23 LADY SMITH: Sorry, when you tell me that, what's going on?  
24 What's the problem? You say "the difficulties  
25 highlighted" in getting information of the sort that was

1           being sought in the case that went to Lord Uist are  
2           still being experienced; is that correct?

3 MS KEARNEY: That's correct, my Lady, yes.

4 LADY SMITH: Can you give me an example?

5 MS KEARNEY: There's been no material change in practices  
6           that we've experienced at the moment. Speaking on  
7           behalf of my regulatory colleagues, there is  
8           communication between Police Scotland that took place in  
9           November and December of last year. There's been no  
10          further communication and no further updates.

11          We were advised in November that there was  
12          consideration of the Opinion being undertaken and that  
13          they were exploring how to simplify data sharing between  
14          ourselves and Police Scotland or Police Scotland and  
15          ourselves.

16          We've heard no further from that. However, as  
17          you've heard already, my Lady, there is a round-table  
18          meeting with the Scottish Government and various other  
19          regulators planned for 3 March, so we're hoping that  
20          will be an opportunity to explore further Police  
21          Scotland's position on that.

22 LADY SMITH: Thank you very much.

23 MS KEARNEY: The Inquiry is in a unique position in being  
24          able to take a holistic overview of how the relevant  
25          processes and agencies work together in the interests of

1 public protection and how these processes may be  
2 improved to ensure the system is fully and properly  
3 joined up in order to be effective. GTC Scotland  
4 respectfully submits that the Inquiry should consider  
5 whether it is necessary to make any recommendations on  
6 the sharing of relevant information, including as part  
7 of the operation of Protecting Vulnerable Groups scheme  
8 when preparing its report on this particular case study.

9 In conclusion, GTC Scotland thanks the Inquiry for  
10 being permitted to participate in this case study and  
11 would be obliged if the Inquiry could consider GTC  
12 Scotland's submissions when preparing its report.

13 LADY SMITH: Thank you very much, Ms Kearney.

14 Mr Brown?

15 MR BROWN: My Lady, I'm not aware that we have progressed  
16 matters. If we just press on, I think.

17 LADY SMITH: Keep going, yes.

18 Can I now turn to the representation for Police  
19 Scotland, please. I see Ms van der Westhuizen is here.

20 When you're ready.

21 Submissions by Ms van der Westhuizen

22 MS VAN DER WESTHUIZEN: Thank you, my Lady.

23 My Lady, I'm grateful for the opportunity to make  
24 this closing submission on behalf of the Chief Constable  
25 of the Police Service of Scotland.

1           Firstly, the Chief Constable wishes to express  
2           sympathy to all survivors of childhood abuse, including  
3           survivors who have experienced abuse within any of  
4           Scotland's boarding schools.

5           The Chief Constable would also like to take this  
6           opportunity to reassure survivors, the Inquiry and the  
7           people of Scotland that Police Scotland is fully  
8           committed to thoroughly investigating all forms of child  
9           abuse that have taken place in Scotland, regardless of  
10          when it happened or who was involved.

11          Police Scotland remains committed to delivering its  
12          response to the Inquiry and ensuring that all relevant  
13          information held is provided in compliance with the  
14          terms of notices issued under the Inquiries Act 2005.  
15          This information includes policies, procedures and  
16          documents relating to investigations into the abuse and  
17          neglect of children within the schools which were the  
18          focus of this phase of the public hearings.

19          Police Scotland also wishes to inform the Inquiry  
20          that in keeping with its continued commitment to  
21          non-recent child abuse investigations, it is currently  
22          investigating non-recent abuse within a number of these  
23          establishments.

24   LADY SMITH: Are you talking about the establishments we've  
25          been looking at in this case study?

1 MS VAN DER WESTHUIZEN: Indeed, my Lady.

2 LADY SMITH: Thank you.

3 MS VAN DER WESTHUIZEN: These investigations have arisen out  
4 of both a review of previous investigations and new  
5 reports from survivors.

6 Prior to the public hearings commencing written  
7 submissions provided to the Inquiry by the General  
8 Teaching Council for Scotland raised concerns regarding  
9 Police Scotland's information-sharing practices, and, as  
10 Your Ladyship has heard, on 26 October 2021, following  
11 a hearing on expenses in the Court of Session, Lord Uist  
12 issued an Opinion in relation to expenses in which he  
13 also gave a view on the over-arching information-sharing  
14 issue.

15 Police Scotland is currently assessing this Opinion  
16 and is liaising with the Scottish Government, GTCS and  
17 other regulatory bodies regarding this matter.

18 LADY SMITH: But I'm being told that they've not reclaimed  
19 the decision?

20 MS VAN DER WESTHUIZEN: No, indeed, my Lady, that's not been  
21 reclaimed.

22 Police Scotland continues to build on its engagement  
23 with survivors of childhood abuse, seeking views and  
24 consulting with survivors, support services and  
25 statutory partners in an effort to enhance public

1 confidence and improve service provision. This  
2 engagement has led to the creation of information  
3 products to enable survivors to make an informed choice  
4 about whether or not they wish to report abuse to  
5 police.

6 LADY SMITH: Sorry, what's an information product?

7 MS VAN DER WESTHUIZEN: My Lady, I understand -- I've had  
8 a look on the Police Scotland website and there is  
9 information available if one inserts the words "child  
10 abuse" to information on the website relating both to  
11 child abuse information, about what it is, how to report  
12 it, advice for perpetrators, but there is also  
13 specifically advice to adult survivors of childhood  
14 abuse, which includes information about why they should  
15 make a report, how to make a report, what happens once  
16 a report is made, who decides whether prosecutions take  
17 place, et cetera. That is available on the Police  
18 Scotland website.

19 LADY SMITH: We're talking about updating the website?

20 MS VAN DER WESTHUIZEN: That's my understanding --

21 LADY SMITH: It's just this term "product" I haven't come  
22 across before.

23 MS VAN DER WESTHUIZEN: Indeed. They may be pamphlets,  
24 et cetera. I don't know what other "products" there may  
25 be available, but certainly there is available

1 information on the website including, I think, a short  
2 video.

3 LADY SMITH: Thank you.

4 MS VAN DER WESTHUIZEN: Police Scotland recognises the  
5 importance of using organisational learning to effect  
6 continuous improvement to ensure that staff have the  
7 best skills and capabilities to deal with the specific  
8 needs of survivors of child abuse and as such Police  
9 Scotland will take into account any good practice or  
10 areas of learning that may be identified from this phase  
11 of the Inquiry hearings as part of its commitment to  
12 developing and improving its service provision.

13 LADY SMITH: Of course, if one is talking about good  
14 practice, I heard very clear quite powerful evidence  
15 from schools to the effect that under the old regime,  
16 prior Police Scotland regime, they felt very supported  
17 by local police services, and indeed to the extent that  
18 they would get to know a particular police officer  
19 locally who would understand them, understand the child  
20 protection practices they were trying to pursue, and be  
21 a really helpful, useful point of contact.

22 Since reorganisation, the date of which I now can't  
23 remember but it's a long time ago, that can't happen,  
24 I understand why, but can you tell me whether Police  
25 Scotland are thinking about what if anything they can do



1 to replicate that valued and valuable relationship that  
2 was established between the independent boarding schools  
3 and them?

4 MS VAN DER WESTHUIZEN: My Lady, I have no specific  
5 instructions to that, but I can certainly ask those who  
6 instruct me to provide any information in that regard to  
7 Your Ladyship, if that's required. I have no doubt --

8 LADY SMITH: That would be helpful, thank you.

9 MS VAN DER WESTHUIZEN: Finally, my Lady, Police Scotland  
10 remains committed to child protection, both locally on  
11 a daily basis as a core statutory child protection  
12 agency, but also nationally, invested with multi-agency  
13 and strategic leadership groups to implement continuous  
14 improvement and make a positive contribution to  
15 protecting Scotland's children, both now and in the  
16 future.

17 My Lady, unless I be can of further assistance,  
18 those are my closing submissions.

19 LADY SMITH: That's all. Thank you very much.

20 MR BROWN: I think, my Lady, certainly information I have  
21 received from solicitors in this building, or remote to  
22 the building rather, can see Mr Blair and hear him, so  
23 we might try it.

24 LADY SMITH: Maybe we should while he's capable of being  
25 captured.

1 MR BROWN: Quite.

2 MR BLAIR: My Lady, can you see and hear me?

3 LADY SMITH: Yes, welcome, Mr Blair, it's taken us a little  
4 time to get to that.

5 MR BLAIR: I am truly grateful again to the Inquiry staff  
6 who have been so efficient in dealing with so many  
7 peculiarities that have arisen in relation to the Care  
8 Inspectorate of late, but I'm very grateful to, as  
9 Your Ladyship put it, be captured by the Inquiry.

10 LADY SMITH: When you're ready, Mr Blair, I'm ready to hear  
11 you. As you know, I've read your submissions so I would  
12 invite you to turn to any particular points you want to  
13 stress in your opportunity to make an oral submission.

14 Submissions by Mr Blair

15 MR BLAIR: I'm very grateful to Your Ladyship for that. Can  
16 I just at the outset record my own personal gratitude to  
17 the Inquiry for allowing me to deliver these submissions  
18 by WebEx, given the weather difficulties experienced in  
19 Scotland generally, and particularly my part of the  
20 world. I truly am very grateful for that.

21 I should also say I'm very grateful for the  
22 considerable effort that the Inquiry staff put into  
23 ensuring my prompt access to the Inquiry papers, given  
24 that I've had to take over instruction in this matter  
25 from Mr McClure of the Care Inspectorate who

1           unfortunately had been unable to continue appearing for  
2           the Inspectorate.

3           Beyond that, my Lady, I wish in no sense is this  
4           meant to be trite, but in relation to my introduction  
5           submissions I do wish to formally repeat and acknowledge  
6           that at the outset the Care Inspectorate recognises and  
7           acknowledges the suffering of all those, regardless of  
8           their origins, gender, race or ethnicity, or indeed  
9           religion, who have been abused when attending boarding  
10          schools and the tremendous courage of those who have  
11          come forward to narrate their experiences to this  
12          Inquiry. All of this plainly serves as a salutary  
13          reminder to us all for vigilance on the part of all of  
14          us, including of course the Inspectorate in protecting  
15          the vulnerable, particularly children, and the  
16          devastating and life-lasting consequences that abuse can  
17          give rise to.

18          It's in that spirit, my Lady, that these submissions  
19          are offered up to the Inquiry, because the Inspectorate,  
20          as declared in the submission, views this Inquiry as  
21          a very valuable learning opportunity and very much as  
22          an exercise in having a mirror held up to itself and  
23          it's entirely open to and receptive to any findings that  
24          the Inquiry might make and any recommendations that the  
25          Inquiry might make.

1 I'm mindful in that regard, my Lady, this morning  
2 Mr Brown reminded us of the difficulties arising in  
3 relation to the use of language in this field, and  
4 indeed in some of the submissions made before my own,  
5 I note again the use of language and terminology which  
6 may be clear to those on the inside but not from the  
7 outside. For example, the use of "product" to describe  
8 a particular facility, which might more readily be  
9 called a helpline or some such thing, rather than  
10 a "product".

11 I readily acknowledge at the outset that that is  
12 an issue for the Inspectorate. I do intend to highlight  
13 that later on in my submissions as one of the key points  
14 for the Inspectorate.

15 My Lady, if I could perhaps move on, skipping over  
16 part 2, the brief overview of scope, and perhaps  
17 touching on some of the points in part 3 of the  
18 submission. There I've attempted to set out, as it  
19 were, an overview of the learning and improvement  
20 experience of the Inspectorate and I simply wish to  
21 stress a couple of points that I think are of particular  
22 moment.

23 In my respectful submission, when the evidence of  
24 Catherine Agnew, Marion Crawford and Mr Lamb, whose  
25 statement was of course read, are considered as a whole,

1           one can see what I think we would call a trajectory, and  
2           I hope a trajectory of learning and improvement since  
3           the Inspectorate took over the relevant regulation of  
4           boarding schools in 2005.

5           In particular, the evidence of Mr Lamb sets out how  
6           the approach to regulation has evolved, and in  
7           particular has evolved up until pretty much the present  
8           day.

9           With that being said, I do have, as Your Ladyship is  
10          aware, certain additional information that was not  
11          before the Inquiry during the oral evidence but which  
12          I considered might be useful for Your Ladyship to have  
13          at this stage of the Inquiry.

14       LADY SMITH: Thank you, yes.

15       MR BLAIR: A number of these developments, in my respectful  
16          submission, are significant. They include but are not  
17          limited to unannounced inspections, which of course is  
18          now the default regime operated by the Inspectorate; the  
19          improvement in accessibility to the Inspectorate by  
20          pupils in the schools. In that regard one can highlight  
21          points of detail such as the availability to use  
22          an online means of communicating with the Inspectorate  
23          to make a complaint, you can contact the Inspectorate in  
24          a world where use of online technology is very much the  
25          stuff of the young and perhaps not so much for some of

1 the more advanced in years of the population.

2 Beyond those points of detail there have also been  
3 a number of key points in practice. For example, the  
4 evidence of Ms Crawford and Mr Lamb highlighted that  
5 there had been a point in the past where the schools  
6 had, to a degree, an ability to select the pupils that  
7 would be put forward to the Inspectorate for any  
8 questions the Inspectorate may have and plainly  
9 experience has shown that that was not necessarily  
10 a helpful or useful approach and there is now far  
11 greater agency on the part of pupils to deal with and  
12 interact with the Inspectorate directly and the  
13 Inspectorate recognises the necessity for that more  
14 direct relationship with pupils.

15 In parallel and of course, my Lady, there is now  
16 improved access to the Inspectorate by parents as well  
17 as the children. The Inspectorate again recognising  
18 shortcomings and difficulties in that regard in the  
19 past.

20 What I would invite my Ladyship to have particular  
21 regard to is that the final thoughts of Mr Lamb can be  
22 viewed as a useful summation of that journey in the  
23 inspection process and how the experience arising from  
24 that journey has informed and continues to inform that  
25 process.

1           What I would also stress in that regard is that  
2           although there is inevitably and still a journey to be  
3           undertaken in terms of communication, levels of  
4           communication between pupils and the Inspectorate are  
5           better than they have been in the past, although not so  
6           much a finding of fact in the formal sense, my Lady, I'd  
7           nevertheless invite the Inquiry to consider finding that  
8           the Care Inspectorate has been engaged in reflecting on  
9           its experience and building on that experience and  
10          improving the valuable service that it provides.

11          I should also say that the Inquiry has, as far as  
12          the Inspectorate's been concerned, been incredibly  
13          useful in drawing together the experiences of the heads  
14          of schools and of course Mr Edward of SCIS. Never  
15          before has that opportunity arisen whereby so much  
16          material could be secured and to allow the Inspectorate  
17          to understand how it's perceived and viewed by the  
18          sector as a whole.

19          I just want to highlight one or two points in part 4  
20          of the Inspectorate's system in that regard.

21          For example, Mr Hawley of Loretto school in his  
22          evidence indicated that the Care Inspectorate process  
23          was very useful indeed. That there was a good link with  
24          the assistant head of pastoral care in the school and  
25          that in essence phones could be picked up and

1 discussions had. He stressed the professional  
2 relationship between the schools and the regulator and  
3 at the end came to the view that the relationship with  
4 the Inspectorate could be regarded as really beneficial.

5 Similar comments were offered up by Lisa Kerr of  
6 Gordonstoun. In fact Your Ladyship will recall, and as  
7 I note, she wholeheartedly and the school wholeheartedly  
8 welcomed the inspection.

9 It's fair to say in my respectful submission that as  
10 a whole there was little if any evidence from heads to  
11 suggest that the investigation or reporting by the  
12 Inspectorate was a bad thing, recognising of course it  
13 can be a stressful experience, it can be time intensive  
14 and no doubt can get in the way of the general job of  
15 running the school. Taking all that into account  
16 though, the general tenor of the evidence of the schools  
17 is that the Care Inspectorate does perform a valuable  
18 role in this field.

19 Indeed, to some extent that's reflected in the  
20 evidence of the Inspectorate itself, Catherine Agnew of  
21 course noted and I recall I think also Ms Gordon noted  
22 that at the start of this relationship schools were to  
23 some extent nervous and uncertain about the process and  
24 the relationship, but now there appears to be a far  
25 greater understanding and living with the system of



1 inspection. For example, that has led to the use of  
2 helplines whereby schools can contact the Inspectorate  
3 to report emerging incidents, whereas perhaps in the  
4 past an emerging incident might not have got to the ears  
5 of the Inspectorate before it's moved from emerging into  
6 something perhaps more serious.

7 That, I say, is also a reflection of the growing  
8 confidence in schools in the Inspectorate process.

9 This, in my submission, was also very much the  
10 flavour of Mr Edward and I know my Lady heard very  
11 detailed evidence from Mr Edward on 4 February. Having  
12 had the benefit of reading the transcript, I found his  
13 evidence to be highly valuable in providing a further  
14 independent perspective on the role of the Inspectorate  
15 apart from the schools themselves.

16 In particular, Mr Edward was keen to highlight that  
17 the school want to be inspected, they want to have these  
18 reports and they want to share these reports.

19 Overall he regarded the process as incredibly  
20 detailed and intensive, but nonetheless in his view it  
21 was a valuable one.

22 What I would ask, my Lady, is to consider making  
23 a finding that schools do find the inspection process to  
24 be both helpful and valuable.

25 I perhaps want to move on to some more general

1 themes I touch on particular matters arising.

2 Again, I don't intend to read this line by line, my  
3 Lady, but if perhaps we could have part 5 of the  
4 submission up on screen, I see that's come up now.

5 The Inspectorate considered there were two broad  
6 general critical themes that have emerged from this  
7 process.

8 Firstly, the language of care.

9 Secondly, the "cluttered" regulatory landscape.  
10 "Cluttered" in quotations marks perhaps to stress the  
11 language that was used by various witnesses, coming to  
12 that view of the landscape being a cluttered one.

13 In relation to the language of care, Your Ladyship  
14 has my submission. Part of the difficulty is of course  
15 that the legislation uses this language of care, it also  
16 of course at schedule 12 of the 2010 Act talks about  
17 care accommodation services.

18 It's never been the position of the Inspectorate  
19 that care was limited to simply bricks and mortar, but  
20 nevertheless one can see how that perception may have  
21 arisen. Indeed, the schools themselves in the evidence  
22 given indicated in the early days of their life,  
23 certainly in terms of regulation by the Inspectorate,  
24 they viewed themselves as pretty much providers of  
25 education.

1           The schools and the Inspectorate have therefore been  
2           on a very similar journey, recognising that what has  
3           been delivered within the school is not simply education  
4           in a narrow sense, but care in the wider sense. Indeed  
5           the role of teachers has moved -- if it ever was purely  
6           educational -- towards an increasingly pastoral role and  
7           the Inspectorate is alive to and accepts that that is  
8           indeed what goes on in the schools.

9   LADY SMITH: Do I take from that, Mr Blair, that you accept  
10          that, so far as the Inspectorate is concerned, they  
11          should not focus simply on the members of staff who  
12          have, for example, boarding house responsibilities or  
13          the matron, but they need to be alert to the  
14          responsibility that every single member of staff has in  
15          relation to caring for a child who is 24/7 away from  
16          home? They can't close their eyes to what's going on in  
17          the classroom as not being something they should be  
18          interested in?

19   MR BLAIR: Entirely, my Lady, I have no difficulty in  
20          accepting that general position on behalf of the  
21          Inspectorate. This Inquiry has served as a useful  
22          conduit to coming to that view, that the line between  
23          education and care, while it exists and formally exists  
24          in legislation, may nevertheless become somewhat more  
25          blurred in practice and it's wrong to simply

1 compartmentalise things into watertight areas. That  
2 would serve potentially to weaken regulatory oversight.

3 LADY SMITH: Well, it would mean that there could be  
4 a lacuna in what was being inspected. Education only  
5 looking at teaching, quality of teaching, Care  
6 Inspectorate only looking at the quality of boarding  
7 house provision, looking after the children out of  
8 school hours --

9 MR BLAIR: Entirely.

10 LADY SMITH: -- and things being missed that would give  
11 powerful evidence about how well the children are being  
12 cared for or not during the school hours.

13 MR BLAIR: Entirely, my Lady.

14 Plainly, for example, the common experiences poor  
15 performance in classroom may indicate problems outside  
16 of classroom. Everyone who's worked in the legal or the  
17 education sector involving education or the social work  
18 sector of legal practice will recognise that the warning  
19 signals of abusive behaviour often are found in how  
20 children perform in the classroom, grades drop,  
21 behaviour changes. I think all of those things are  
22 common currency in this field.

23 LADY SMITH: Thank you.

24 MR BLAIR: I'm grateful to my Lady for that observation.

25 Accordingly, my Lady, the Inspectorate's entirely

1 open, as I indicated in paragraph 8 of the submission,  
2 that the Inspectorate is open to a finding that care is  
3 not to be interpreted in an unduly narrow manner,  
4 bearing in mind the particular regulation with which we  
5 are concerned, and that in a broad sense and as a matter  
6 of routine that the Inspectorate should speak more  
7 widely to teachers other than directly involved in the  
8 boarding aspect of the school.

9 In that regard, my Lady, this morning I was  
10 interested to hear and I recollected perhaps in this  
11 context the submissions being made -- I believe from the  
12 Scottish Government -- that guidance is being  
13 promulgated in an attempt to clarify aspects of this  
14 particular area and in particular reading on to this  
15 question of the regulatory landscape.

16 Because of course inevitably, my Lady, that inasmuch  
17 as one looks at the question of care and tries to unpick  
18 what care might mean, in turn that raises further  
19 questions as to: to whom does one report concerns about  
20 the provision of care? Is it the Care Inspectorate? Is  
21 it Education Scotland? Is it the police? Is it the  
22 SSSC? The GTCS, all these and more?

23 In that regard, the point made by Ms O'Neill this  
24 morning in relation to guidance and that being currently  
25 with the Care Inspectorate, I did ask those instructing

1 me this morning about where that lay in light of that.  
2 I understand that's currently being given active  
3 consideration by the Care Inspectorate and it's  
4 certainly not something that's on a back-burner.

5 I can't, however, give my Ladyship any specific  
6 timescale as to when there might be -- to use some of  
7 the nomenclature again -- sign-off on that, but I can  
8 say it is being actively considered by the Care  
9 Inspectorate.

10 Having said those general things about the guidance,  
11 that really takes me back to the cluttered regulatory  
12 landscape where this issue of guidance has arisen.

13 It was quite evident and there is no escaping it, my  
14 Lady, that a number of the witnesses expressed concern  
15 over the issue of to whom does one report concerns?  
16 Again, the evidence of Mr Edward was particularly  
17 helpful in that regard. He said in his evidence that  
18 there was concern about to whom an issue can be  
19 reported, how one might define what the issue was, was  
20 it an issue, and a lot of this being something of, to  
21 use his own words, a big ask for some of the smaller  
22 schools, who perhaps don't benefit from bespoke  
23 personnel dealing with care concerns of this type.

24 His view, and a view shared by the Inspectorate, is  
25 that this of itself can lead to a risk that schools find

1 themselves in a place of believing there to be a risk  
2 but not knowing what they should be doing about it.

3 A number of points.

4 Firstly, the Care Inspectorate plainly is a creature  
5 of statutes and has to operate within the parameters  
6 afforded to it by statute and can't stray beyond that.  
7 To some extent the question of what is reported to the  
8 Inspectorate is a matter that is set down in  
9 legislation.

10 That is not to say the legislation is easy to  
11 understand. Plainly it's not. Accordingly, the  
12 Inspectorate would invite the Chair to consider whether  
13 and to what extent it's appropriate for there to be  
14 clarification of regulatory roles as between the  
15 different agencies involved.

16 As I have indicated in the submission, plainly that  
17 could on one view take the form of legislative reform,  
18 building on the attempt to reform quangos, as they're  
19 sometimes called, in the 2010 Act, or it could take the  
20 form of guidance. I've already said something about  
21 that, because it appears that the Scottish Government  
22 are already in the process of developing guidance with  
23 the Inspectorate and indeed others to clarify the  
24 language that is used.

25 The only point I would make in that regard, my Lady,

1 is consistent with the general theme and tenor of  
2 remarks from Mr Brown and my Lady is that if guidance is  
3 to be promulgated, it has to be set out in language  
4 which is accessible to the very people who are going to  
5 have to apply it. To take the example of Mr Edward with  
6 a small school with limited resources, there is little  
7 point in promulgating guidance which simply obfuscates  
8 an already cluttered landscape and the language of any  
9 such guidance should, in my respectful submission, be  
10 clear and accessible to people who are not legally  
11 qualified in particular.

12 My Lady, having made certain submissions in relation  
13 to general themes, I simply wish to touch upon some of  
14 the specific themes in relatively shorthand form,  
15 conscious of the fact my Ladyship already has had the  
16 opportunity of reading the submissions and conscious of  
17 time.

18 I now move to section 6 and in relation to  
19 section 6, the Care Inspectorate identified, certainly  
20 from its perspective, six specific areas, one being the  
21 inspection snapshot, the inspection intervals and any  
22 change in grades over a short time, child protection  
23 training, the value of inspection reports, complaints  
24 and communication with children and young people.

25 Your Ladyship, in relation to inspection as



1 a snapshot, Your Ladyship will recall the evidence of  
2 Mr Lamb and Ms Crawford about Merchiston, regarding that  
3 they were to set out in paragraphs 6.1 through to 3  
4 a summary of aspects of their evidence about how they  
5 viewed that process. Accepting always as  
6 an Inspectorate does at 6.4, my Lady, that plainly what  
7 happened at Merchiston has served to simply outline the  
8 point made at the outset of the value of the learning  
9 experience from that inspection.

10 Although the Inspectorate in no way seeks to back  
11 away from any criticism that may be offered in that  
12 regard by Mr Brown or the Inquiry, I would perhaps  
13 stress that in relation to Merchiston at the time of the  
14 problems in question, it also reflected a time when that  
15 particular school itself was less confident and less  
16 understanding of the role they had to play in terms of  
17 reporting matters to the Inspectorate.

18 My Lady, the Inspectorate would of course welcome  
19 a finding from the Inquiry as to how Merchiston might be  
20 viewed as a basis for future improvement in the  
21 inspection process. In particular, as I've indicated in  
22 the submission, the extent to which any inspection  
23 process ought to be informed by historic concerns and  
24 the extent to which any inspection process should be  
25 alive to the need to revisit historical matters if the

1 process can identify a possible ongoing issue or indeed  
2 a historic issue that might highlight the adequacy or  
3 not of ongoing child protection provision.

4 My Lady, perhaps moving on to the related matter of  
5 the frequency of inspection and the question of drops in  
6 grades. Again, my Lady has, I hope, a detailed or  
7 helpful submission in that on part 6, paragraphs 6.14 to  
8 6.21. Again, in my respectful submission, that aspect  
9 of the matters it does cause comment to be made in  
10 relation to the question of language.

11 I would entirely accept the observation of Mr Brown  
12 this morning that even when one reads the letter that  
13 went out to parents in January 2015 and the related  
14 report in relation to Merchiston that one would still  
15 have difficulty in working out exactly what had gone on  
16 without the benefit of the plethora, indeed  
17 an abundance, of evidence that my Lady has heard.

18 The Inspectorate in no way rests itself and takes  
19 the view that that letter was enough, and I hope I made  
20 the point in the submission already.

21 The Inspectorate would recognise this as a problem  
22 in general -- I'll have something to say on that  
23 shortly -- but what I would like to say and highlight in  
24 this part of the submission, paragraph 6.21, is that the  
25 Inspectorate would very much value any findings that

1 Your Ladyship might make about the utility of a system  
2 of inspection informed by considerations of intensity  
3 and what considerations might be relevant to determine  
4 in light of known or suspected issues the depth and  
5 intensity of any inspection, notwithstanding earlier  
6 good grades or good regulatory history.

7 There's a danger, my Lady, in my respectful  
8 submission of -- various terms are used, I believe one  
9 is regulatory capture, that one can become familiar with  
10 an institution and that familiarity can affect one's  
11 judgement and objectivity.

12 The Inspectorate would invite findings on whether  
13 the practices of the Inspectorate are sufficiently  
14 robust such as to mitigate against the risk.

15 My Lady, I'm moving now to the question of child  
16 protection. I'm conscious again that my Lady has been  
17 provided with an update in relation to the training  
18 provided by the Inspectorate.

19 The evidence of Ms Crawford reflected a time when  
20 it's fair to say that the approach taken by the  
21 Inspectorate was perhaps more ad hoc, on the footing  
22 that those who were recruited into the Inspectorate  
23 tended to be persons from a care or teaching background  
24 and where it might be reasonably assumed that they have  
25 experience in child protection as understood to be the

1 case at that time. The evidence of Ms Crawford was  
2 of course that she'd been a principal teacher and had  
3 experience of child protection.

4 The Inspectorate has not been resting on that ad hoc  
5 approach, my Lady. As I hope I've demonstrated from the  
6 evidence of Mr Lamb, which I summarise at 6.24, he spoke  
7 of regular child protection training, online training  
8 from organisations, such as government and other  
9 agencies, as well as having regular discussions with  
10 SCIS.

11 Of course on the back of that, the Inspectorate has  
12 now produced, and my Lady has an overview, child  
13 protection learning and development overview document  
14 which summarises in tabular form, which I think is  
15 helpful, the process of child protection training that  
16 inspectors now undergo.

17 That being said, my Lady, plainly the Inspectorate  
18 would welcome any other findings that my Lady feels  
19 appropriate in relation to child protection.

20 In relation to the question of the inspection  
21 reports, in a sense I've already made the submission in  
22 light of what I already said, but I would wish to  
23 highlight a couple of points at paragraph 6.26 onward.

24 The Inspectorate is plainly mindful that my Lady and  
25 Mr Brown have from time to time expressed concern over

1 the intensity of inspection reports and the extent to  
2 which their utility could be enhanced, both in terms of  
3 language used and reasoning, particularly reasoning  
4 leading to the awarding of a particular grade or  
5 a recommendation or the requirement.

6 Mr Brown very helpfully in his submission to my Lady  
7 on 4 February noted inspection reports were not  
8 necessarily clear and were formulaic and expressed in  
9 a language that was far from clear. He also helpfully  
10 highlighted the points that absent a deluge of  
11 information which the Inquiry has heard, it is perhaps  
12 striking that from a reader's point of view, without  
13 that level of knowledge, it would not be apparent, even  
14 if you were working at Merchiston, what is being spoken  
15 about.

16 Mr Edward of course shared that concern that to  
17 readers just looking at the numbers, the grades awarded,  
18 not necessarily the narrative leading to those numbers,  
19 which he agreed could nonetheless be opaque.

20 The Inspectorate, my Lady, is not complacent. It is  
21 well aware that this has been a recurring theme within  
22 the Inquiry process.

23 There is a recognition in the evidence, certainly of  
24 Catherine Agnew, that it has always been the desire of  
25 the Care Inspectorate to use plain English and to avoid,

1 and I quote here, "Language which is convoluted or is  
2 only intelligible to those who work inside the  
3 organisation and not outside the organisation".

4 Part of the difficulty, my Lady, plainly is that in  
5 any organisation, be it the law, the medical profession,  
6 any professional body, those involved will sometimes use  
7 language which makes sense to those involved but it's of  
8 little value to those on the outside. The perception on  
9 the part of the Care Inspectorate as to what might be  
10 plain English or what might be clear may in fact differ  
11 from what is in fact plain English and what is in fact  
12 clear. The Inspectorate readily takes that on board as  
13 a learning point from this Inquiry.

14 What I can say is -- again the Inspectorate has  
15 ensured that inspectors are trained and given guidance  
16 in relation to report writing in an attempt to improve  
17 the quality of the writing, the clarity of the writing  
18 and the reasoning underlying the conclusions which are  
19 found in a report.

20 I had in mind when I was reviewing my submissions  
21 for this morning whether lessons might be learned,  
22 my Lady, from general administrative law. Of course  
23 Your Ladyship will be familiar with the formula in the  
24 Wordie case on the adequacy of reasons.

25 My Lady will of course know that the formula in

1 Wordie was directed at the informed reader, and to that  
2 extent can only provide a degree of usefulness. It  
3 nevertheless struck me that having reflected on this  
4 further, the Care Inspectorate should be open to  
5 recognising that its readership is not just other care  
6 inspectors but is the community as a whole. The pupils,  
7 the parents, the police, other agencies, all of those  
8 who may have to consider what the Care Inspectorate has  
9 to say, has to understand exactly what is meant by the  
10 words chosen and used.

11 In a similar vein, insofar as the Care Inspectorate  
12 has reflected on the writing process, its evaluative  
13 process is now in my respectful submission a clearer  
14 one. It endeavours to provide a clearer evaluation of  
15 why conclusions have been reached and so provide  
16 adequate and intelligible reasoning.

17 That is not to say, my Lady, that that journey has  
18 come to an end. The Inspectorate remains entirely open  
19 to further learning in that regard.

20 My Lady, I have something more to say on complaints  
21 and communications with children in boarding schools,  
22 but I can deal with those quite quickly.

23 In relation to complaints, it's fair to say when  
24 a complaint is --

25 LADY SMITH: Sorry, we're losing you a little, Mr Blair, but

1 I think it's just that you're lifting your head from  
2 your microphone.

3 MR BLAIR: That could be the case, my Lady. I do apologise.

4 LADY SMITH: It's all right, it's easily done.

5 MR BLAIR: In relation to the question of complaints,  
6 happily, and I don't say this in a complacent way, the  
7 number of complaints received by the Inspectorate are  
8 relatively low. It's fair to say they may be  
9 increasing, based on recent figures, but the view of the  
10 Inspectorate is that that probably reflects greater  
11 awareness on the part of pupils in particular about the  
12 ability to complain to the Inspectorate, which it has to  
13 be said is plain it includes them.

14 The other point I would wish to make about the  
15 complaints process is that again Mr Edward has stressed  
16 that the complaints process is now widely known and is  
17 well established.

18 Accordingly, the Inspectorate would invite the  
19 Inquiry to find that the complaints process is  
20 a valuable one and while undoubtedly could be improved,  
21 is nevertheless something which adds value to the  
22 experience of children in schools, and in particular  
23 gives them a real sense of ownership of their ability to  
24 complain about their experience rather than relying on  
25 others to complain on their behalf, for example their



1 parents.

2 Lastly, in relation to the question of  
3 communication -- I make this point relatively shortly,  
4 my Lady -- the Inspectorate has and is taking on board  
5 the observations made by my Lady about how it  
6 communicates to children, particularly children from  
7 a different language background and whose first language  
8 may not be specifically English.

9 The Inspectorate has already noted the comments made  
10 by my Lady in that regard, but again we would be open to  
11 any further comments or findings of fact the Inquiry  
12 might make about how it communicates and interacts with  
13 children.

14 My Lady, unless there's anything further I can  
15 usefully assist this morning, those would be the  
16 submissions of the Care Inspectorate.

17 LADY SMITH: Mr Blair, that's very helpful. As I said,  
18 I also have your detailed written submission.

19 Thank you for the additional two documents, the 2021  
20 document about how the Inspectorate deals with  
21 complaints and the copy of the letter to parents at  
22 Merchiston dated January 2015. That's added to my  
23 understanding.

24 Thank you for that. Thank you for joining us over  
25 the link. I'm glad it worked in the end and I'm able to

1 let you go. Thank you.

2 MR BLAIR: Very much obliged, my Lady. Thank you.

3 LADY SMITH: Finally, could I invite Ms Lawrie to address me  
4 on behalf of the Lord Advocate.

5 Submissions by Ms Lawrie

6 MS LAWRIE: Thank you, my Lady.

7 I'm grateful for this opportunity to make a closing  
8 submission to the Inquiry on behalf of the Lord  
9 Advocate.

10 During the current case study, the Inquiry has heard  
11 evidence of physical, sexual and emotional abuse  
12 perpetrated against children who, as part of or all of  
13 their education, attended boarding school.

14 Evidence has been provided to the Inquiry that some  
15 of this abuse was reported to and thereafter  
16 investigated by the Crown Office and Procurator Fiscal  
17 Service, which I'll shorten to COPFS.

18 Indeed, the Inquiry has heard that prosecutorial  
19 action was subsequently taken by COPFS in respect of  
20 a number of individuals against whom allegations of  
21 abuse were made.

22 The Inquiry has also heard evidence in relation to  
23 the ongoing proceedings being brought against the  
24 accused afforded the cypher 'Edgar' by the Inquiry.  
25 Given that these proceedings are currently live and thus

1 to protect the integrity of any future court process,  
2 the information that COPFS can provide today about this  
3 case is limited.

4 Nevertheless, during the course of the present case  
5 study the Inquiry has heard evidence from individuals  
6 who are complainers in respect of the prosecution of  
7 'Edgar'. It must be acknowledged that these complainers  
8 were critical of COPFS' decision making and  
9 communication with them. That evidence, alongside all  
10 other evidence given to the Inquiry, has been and will  
11 continue to be very carefully considered by COPFS.

12 However, the Lord Advocate --

13 LADY SMITH: You say that, Ms Lawrie. Is it being  
14 considered more widely than that particular case, as  
15 what was flagged up by one complainer in particular, was  
16 his feeling he had to do homework that should have been  
17 done by the Lord Advocate.

18 MS LAWRIE: Yes, my Lady.

19 LADY SMITH: That has resonance across the board for  
20 everything that the Lord Advocate does. Has it been  
21 taken on board?

22 MS LAWRIE: It is being taken on board, my Lady. The Lord  
23 Advocate is very proactive in terms of seeking out  
24 concerns and problems, because she wants to know about  
25 them because she wants them to be addressed and for

1 improvements to be made, my Lady.

2 LADY SMITH: Good.

3 Thank you.

4 MS LAWRIE: The Inquiry has heard evidence that the Lord  
5 Advocate met with the complainer -- this is what my Lady  
6 has just alluded to -- it was the complainer who is also  
7 an applicant in this Inquiry. The Lord Advocate met  
8 with that complainer to discuss the concerns that he had  
9 in respect of the prosecution of 'Edgar'.

10 Separate to those concerns, my Lady, the present  
11 case study has also heard evidence from the General  
12 Teaching Council for Scotland, otherwise known as the  
13 GTCS. The Inquiry had the opportunity to consider  
14 firstly a report prepared by the council, which included  
15 reference to the process of information sharing between  
16 the GTCS and bodies such as COPFS and, secondly,  
17 a formal written response to the GTCS report submitted  
18 on behalf of the Lord Advocate.

19 In addition to these written submissions, on  
20 19 March last year the Inquiry heard oral evidence in  
21 respect of concerns about the process of information  
22 sharing between the GTCS and other bodies, including  
23 COPFS. The Inquiry heard evidence that COPFS would be  
24 happy to participate in the development of  
25 an information-sharing agreement.



1 has been so welcome and so helpful. I'm sure you'd all  
2 want me to assure them that we value everything that  
3 they have been doing for us.

4 Turning to what happens now in relation to the  
5 boarding schools case study, let me warn you, in case  
6 you hadn't realised, this was a very substantial case  
7 study. Some statistics I can share with you are -- you  
8 could count this for yourselves -- we've had over 220  
9 witnesses. We have so far nearly 20,000 documents. We  
10 have looked in detail at what happened in actually not  
11 just seven schools but we, through the headings of  
12 different schools, also drew in evidence about some prep  
13 schools that children had been at. There was a lot of  
14 important evidence that, whilst we have been reviewing  
15 it as we go along, will now have to be analysed and  
16 thought about in considerable detail.

17 There is also, of course, the matter of the suite of  
18 regulatory public bodies that we've heard from and about  
19 whom we will need to think.

20 So you're not going to get case study findings any  
21 time very soon, but, as ever, let me assure you that  
22 they will be completed and will be published just as  
23 soon as I can, bearing in mind that it has to be done  
24 properly and a good outcome in terms of the quality of  
25 the product, to pick up a word we've been talking about

1 this morning, has to be achieved.

2 I can also at this point perhaps tell you that so  
3 far as child migration is concerned, some of you here  
4 may also have an interest in the case study findings and  
5 recommendations from child migration. The work on that  
6 is well underway. It's again a very substantial piece  
7 of work and I would hope to be publishing that in the  
8 not too distant future. I can't give you precise dates,  
9 but we're well along the road towards completion of  
10 that.

11 Otherwise, the next public outing of the Child Abuse  
12 Inquiry is going to be at a round-table session towards  
13 the end of March, when the topic that's going to be  
14 examined is the psychology of abusers. I think I've  
15 talked about this already in public. But it's a new  
16 type of hearing at which we'll be drawing together  
17 expert evidence on that theme with various relevant  
18 experts, a number of psychologists and others having had  
19 sent to them specific questions we'd like them to help  
20 us with. Then that will be addressed in oral evidence  
21 literally around the same table in here.

22 We will be moving to foster care, as some of you may  
23 have picked up already, in May.

24 But, as ever, the message is keep an eye on the  
25 website. Once dates, witnesses, arrangements are

1 finalised, they're posted there and that's where you can  
2 get the most up-to-date news of what's happening.

3 Otherwise, my thanks go to all of you again, to all  
4 the representatives of the boarding schools who I know  
5 have worked so hard to engage with us along with the  
6 schools themselves. I have regularly been heartened by  
7 the extent to which you have all -- you and the  
8 schools -- taken this job very seriously. Thank you so  
9 much and thank you to the regulatory organisations.  
10 I do know you have a lot on your plate, and dealing with  
11 us on this relatively small sector of the subject matter  
12 you have a responsibility for will not have been an easy  
13 task, but thank you for doing as you have done.

14 That completes all I have to say at the moment.

15 A final opportunity for anyone who has any queries  
16 at this stage that they want to raise here? I don't  
17 know if there is anything.

18 No? Silence.

19 Well, you know where we are, you know who to speak  
20 to here if you do have any, so please don't hesitate to  
21 do so.

22 Thank you again, and I rise now for the last time in  
23 the boarding school case study

24 (12.45 pm)

25 (The Inquiry adjourned until March 2022)



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

Submissions by Mr Brown .....1  
Submissions by Ms Grahame .....6  
Submissions by Mr Scott .....16  
Submissions by Ms O'Neill .....26  
Submissions by Mr Weir .....53  
Submissions by Ms Kearney .....55  
Submissions by Ms van der Westhuizen .....64  
Submissions by Mr Blair .....70  
Submissions by Ms Lawrie .....94  
Closing remarks .....97

